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8 ENDOWMENT

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT  
11

12 THE CALIFORNIA ENDOWMENT, a  
13 Non-Profit Public Benefits Corporation,

Petitioner,

14 v.  
15

16 LOS ANGELES COUNTY  
17 METROPOLITAN TRANSPORTATION  
AUTHORITY, a Public Entity; and DOES  
1-10

18 Respondents.

19  
20 AERIAL RAPID TRANSIT  
21 TECHNOLOGIES, LLC, a Delaware  
Limited Liability Company

22 Real Party-in-Interest.  
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Case No. 22STCP01030

**PETITION FOR WRIT OF MANDATE  
(Code of Civil Procedure section 1085)**

1                   Petitioner The California Endowment, a California Nonprofit Public Benefit  
2 Corporation (“The Endowment”), brings this Petition for a Writ of Mandate, seeking  
3 review and relief from the decisions of Respondent, Los Angeles County Metropolitan  
4 Transportation Authority (“Metro”) to approve, without public disclosure and/or  
5 involvement, a sole source determination to proceed with Real Party-in-Interest’s Aerial  
6 Rapid Transit Technologies, LLC’s (“ARTT”) unsolicited proposal for a multi-million  
7 dollar project involving the proposed use of aerial gondolas to transport individuals from  
8 the Forecourt of Union Station, over a public right of way, a metro line, Chinatown, a  
9 freeway, and multiple communities, to Dodger Stadium (the “Gondola Project” or  
10 “Project”). Such sole source approval was taken in violation of Metro’s own stated  
11 policies and procedures, and, therefore, should be reversed through this Petition brought  
12 pursuant to California Code of Civil Procedure 1085.

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**PRELIMINARY STATEMENT**

15                   1.       This Petition involves the determination by Metro to fast track for sole  
16 source approval, a multi-million-dollar Gondola Project proposed by ARTT (which was  
17 created by McCourt Global which is, in turn, owned by Frank McCourt, the former owner  
18 of the Los Angeles Dodgers) in direct violation of Metro’s own Unsolicited Proposals  
19 Policy. Compounding that violation, Metro’s unsupported sole source determination  
20 enabled this Project to move forward without being subject to the competitive bidding  
21 requirements necessary for all significant public transportation projects. Most importantly,  
22 all of these critical actions in matters of vital public interest, were taken administratively,  
23 without public knowledge, oversight and/or involvement—and all in direct violation of  
24 Metro’s own procurement policies. Absent immediate judicial review, these initial  
25 determinations—which set the course for a major investment of tax-payer funds and direct  
26 impacts on the local community, service providers, and property owners (including The  
27 Endowment)—will not be reviewable even as the Gondola Project proceeds towards the  
28 entitlement/construction phase. As such, The Endowment—who has

1 a direct and beneficial interest in this Gondola Project and the surrounding land—seeks  
2 judicial review of Metro’s arbitrary and capricious decision to pursue the Gondola Project  
3 in violation of Metro’s own regulations. Further, because the Endowment seeks to protect  
4 the interests of its community, and to ensure that local agencies (like Metro) comply with  
5 their own laws, the Endowment is beneficially interested and legally permitted to bring this  
6 action.

7  
8           2.       Making Metro’s actions even more suspect is the absolute dearth of  
9 publicly available information about the Gondola Project and Metro’s determination to  
10 pursue it. Indeed, while some members of the public may have heard about the Gondola  
11 Project in December 2019, Metro’s sole source determination through the Office of  
12 Extraordinary Innovation was not disclosed to the public. The Endowment itself was  
13 unaware of its existence until September 2021 and only after The Endowment and other  
14 organizations sought records regarding the Gondola Project. The Gondola Project,  
15 therefore, appears to have all the earmarks of a clandestine, sweetheart deal, carefully  
16 sidestepping the significant public engagement, outreach and transparency required of all  
17 Metro public transportation projects while simultaneously avoiding the scrutiny and  
18 competitive bidding required of private projects. By fast-tracking and sole-sourcing a  
19 multi-million-dollar aerial tram through Metro’s “Office of Extraordinary Innovation”  
20 (“OEI”) Metro deprived the public of knowledge and input regarding the Gondola Project  
21 as it proceeded through Metro’s internal review process.

22  
23           3.       Because no immediate and adequate relief is available, and because  
24 there are no administrative remedies to exhaust, The Endowment asks this Court to issue a  
25 writ of mandate compelling Metro immediately to halt its work on the Gondola Project,  
26 including all Metro staff support provided in its role as lead agency for the Project, and to  
27 terminate its sole source contract with ARTT. At a bare minimum, the determination that  
28 the Gondola Project could proceed as a sole source project must be revisited and reversed,

1 thereby ensuring that the Gondola Project will be subject to public review, oversight and a  
2 competitive bidding process.

3  
4 **GENERAL ALLEGATIONS**

5 **The Parties**

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7 4. Petitioner The California Endowment (“The Endowment”) is a  
8 nonprofit public benefit corporation organized under the laws of the State of California.  
9 The Endowment was created in 1996 as a private foundation dedicated to expanding  
10 access to affordable quality health care for underserved individuals and communities and  
11 promoting fundamental improvement in the health of all Californians. The Endowment,  
12 furthers its mission to promote greater health and racial equity by awarding grants to non-  
13 profit organizations located in communities throughout California. The Endowment’s  
14 headquarters are located at 1000 N. Alameda St., Los Angeles, California (the “The  
15 Endowment Headquarters”). At this location The Endowment’s staff distributes over 1500  
16 grants to charitable organizations each year, provides below-market office space to local  
17 non-profit organizations that serve the greater Los Angeles community, and, most  
18 importantly, through The Endowment’s Center for Healthy Communities, provides  
19 essential meeting, convening and conference space free of charge, to nonprofit  
20 organizations, grantees and public sector partners who bring together hundreds of people  
21 to work together and further their community-based goals. Every year, The Endowment  
22 welcomes over 150,000 guests to its campus. In 2019, The Endowment’s Center for  
23 Health Communities hosted over 500 Grantee conferences, 700 Government conferences,  
24 and 800 non-profit organizational conferences. Thus, The Endowment Headquarters and  
25 campus serves as a crucial anchor point for the Los Angeles nonprofit community, where  
26 hundreds of individuals travel to and gather on a daily basis to use The Endowment’s  
27 parking lot, office space, and conference center.

28



1           9.       First promulgated in 2016 and revised in 2018, Metro has an  
2 *Unsolicited Proposals Policy*, a true and correct copy of which is attached hereto as  
3 **Exhibit A**. An Unsolicited Proposal is a written proposal that is submitted to Metro on the  
4 initiative of the submitter to develop a partnership that is not in response to a formal or  
5 informal request issued by Metro.

6  
7           10.       Additionally, Metro has publicly available *Acquisition Policy and*  
8 *Procedure Manual* (the “Acquisition Policy”) first issued in 2010. A true and correct copy  
9 of the Acquisition Policy is attached hereto as **Exhibit B**.

10  
11           11.       Within Metro, there exists the Office of Extraordinary Innovation  
12 (“OEI”), which allows collaboration between Metro and the private sector to facilitate  
13 innovative projects. OEI acts as the evaluator of these projects and evaluates unsolicited  
14 proposals for technical and/or financial merit. OEI evaluates unsolicited proposals through  
15 a two-phase process. The first phase (“Phase I”) reviews the proposal for conceptual  
16 merit, applying a long list of factors laid out in the Unsolicited Proposals Policy. (Exh. A,  
17 pp. 4-5). In Phase I, OEI, in cooperation with Metro Vendor/Contract Management  
18 (V/CM) (collectively the “Review Team”), first does a threshold review to determine  
19 whether the proposal meets the gating requirements of an unsolicited proposal and if the  
20 proposal meets the threshold requirements. Then the Review Team reviews the conceptual  
21 proposal against several factors, including but not limited to whether the proposal offers  
22 direct or anticipated benefits to Metro, its passengers and the community, and whether the  
23 proposal satisfies a need for Metro that can be reasonably accommodated in Metro's annual  
24 long-term capital and operating budgets without displacing other planned expenditures,  
25 without placing other committed projects at risk, and without significantly increasing the  
26 cost of the proposed items.



1           14.     On August 10, 2018, Metro sent a Request for Information about the  
2 Gondola Project to ARTT. ARTT responded to this request on September 26, 2018. A  
3 true and correct copy of this response is attached hereto as **Exhibit D**. Without providing  
4 any notice to the public or opportunity for public review, on October 11, 2018, less than  
5 six months after the receipt of the unsolicited proposal, Metro determined that this  
6 multimillion-dollar public transportation project met Metro's criteria for a sole source  
7 determination instead of circulating the Gondola Project in compliance with Metro's  
8 normal competitive bidding procedures. Metro's determination letter is attached hereto as  
9 **Exhibit E**. In so doing, Metro also acknowledged that it would enter into exclusive  
10 negotiations for the Gondola Project with ARTT

11  
12           15.     Metro and ARTT executed a Letter of Intent ("LOI") for the Gondola  
13 Project on October 31, 2018. On December 3, 2018, the Chief of OEI sent a letter to  
14 Metro's Board of Directors notifying the Board of Metro's decision to close the Unsolicited  
15 Proposal process and to proceed with exclusive negotiations with ARTT under the signed  
16 LOI. On April 26, 2019, Metro and ARTT entered into a *Memorandum of Agreement*  
17 *Between Los Angeles County Metropolitan Transportation Authority and Aerial Rapid*  
18 *Transit Technologies LLC* (the "Metro MOA"). A copy of the Metro MOA is attached  
19 hereto as **Exhibit F**. From the first submittal of the Unsolicited Concept Proposal to  
20 execution of LOI, Metro took less than six months to move forward on the Gondola  
21 Project, and then six months to determine the Gondola Project could be sole sourced. No  
22 Metro Board meeting was held to consider or approve this sole source procurement.

23  
24           16.     It was not until December 2019, long after Metro had already awarded  
25 ARTT a sole source agreement, when The Endowment first learned of the existence of the  
26 Gondola Project. The Endowment received a preliminary presentation about the project  
27 from ARTT's representative, Ms. Cindy Starrett of Latham & Watkins. It was then when  
28 The Endowment was first made aware that ARTT planned to erect an enormous tower



1 (subsequently revealed to be 195 feet in height) in the City right-of-way on Alameda  
2 Triangle immediately adjacent to The Endowment Headquarters. The Endowment’s  
3 request for further information and details about the towers, the route, and the impact of  
4 the project was denied by ARTT unless The Endowment was willing to sign a non-  
5 disclosure agreement, which included a commitment to not oppose the project. The  
6 Endowment respectfully declined to waive this right without a comprehensive  
7 understanding of the Gondola Project and its social, economic, and environmental impacts  
8 on the surrounding communities.

9  
10           17. Since 2019, The Endowment has met with Metro many times to  
11 request additional details on matters of vital interest to the surrounding community and  
12 public including but not limited to the Gondola Project’s scope, use of public property and  
13 right of way; community impact, including community displacement, safety, pollution,  
14 traffic, and parking; cost, including passenger ticket fees, maintenance, operation, and  
15 interface with Metro. Unfortunately, in response, Metro and ARTT have provided only  
16 general “back of the envelope” information claiming that more detailed information,  
17 essential to determine Project viability, is “in process” and allegedly unavailable. (See  
18 Letter from Metro to The California Endowment dated September 9, 2021, attached hereto  
19 as **Exhibit G**). As described further below, this is concerning because pursuant to the  
20 Unsolicited Proposals Policy, project viability must be determined--*prior* to making a sole  
21 source determination or proceeding with contract negotiation. (Exh. A, Unsolicited  
22 Proposals Policy, p. 6-7; 9). This failure to comply with Metro’s internal policies coupled  
23 with the lack of transparency surrounding the Gondola Project has been a longstanding  
24 concern expressed by The Endowment and by similarly concerned community  
25 stakeholders.

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1  
2 Metro Abused its Discretion in Approving the Gondola Project to Proceed to Phase I of the  
3 Unsolicited Proposals Policy  
4

5           18. As set forth above, OEI evaluates unsolicited proposals using a two-  
6 phase process. Historically, OEI has accepted primarily small innovative proposals  
7 meeting an important Metro need—not new transportation systems of the scale proposed  
8 by the Gondola Project. The record of Metro's internal evaluation of ARTT's unsolicited  
9 proposal does not support OEI staff's recommendations nor Metro's decision to allow the  
10 Gondola Project to proceed through this two-phase process because the Gondola Project  
11 does not meet the basic threshold requirements or the evaluation criteria necessary to  
12 advance to a sole-source agreement. It is clear from the record that Metro should not have  
13 approved the Gondola Project proposal because the Gondola Project failed to meet Metro's  
14 evaluation process, standards, and requirements.

15  
16           19. As set forth in the Unsolicited Proposals Policy, upon receipt of a  
17 conceptual proposal, the Review Team must first determine whether the proposal meets  
18 the following threshold requirements before initiating Phase I evaluation: (i) satisfies the  
19 definition of an unsolicited proposal; (ii) includes all required content and attachments;  
20 (iii) contains sufficient detail to enable Metro to perform an adequate evaluation, (iv) if  
21 submitted by parties external to Metro, has been approved by a responsible official or other  
22 representative authorized to contractually obligate the proposer; (v) complies with the  
23 marking requirements for use and disclosure of data; and (vi) if submitted by parties within  
24 Metro, has been approved with signature by a departmental Chief. (Exh. A, Unsolicited  
25 Proposals Policy, p. 4). These are threshold evaluation criteria—failing to meet these  
26 initial standards will prevent the project from proceeding to full Phase I review.  
27  
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1           22.     Initially, under the first identified criteria, the Gondola Project  
2 provides no discernable benefits to Metro, to Angeleno taxpayers, or to the broader  
3 community. ARTT has made it abundantly clear that the Gondola Project will be a for-  
4 profit income generator for ARTT, not Metro, Metro's ridership or the City. (Exh. D,  
5 ARTT Response, p. 13). Because this is a privately owned public transportation project,  
6 the Gondola Project will not take TAP payments, can set its own fees, transportation  
7 schedule, and access, thereby providing little to no public benefit to the community. (*Id.*,  
8 p. 12). Further, the Gondola Project is not self-sufficient. The Gondola Project was  
9 designed as a “park-and-ride” facility which provides no additional parking in an already  
10 congested area. Based on the documentation provided, Gondola Project patrons are likely  
11 to park their vehicles at Union Station's limited parking facilities, or on the side streets  
12 adjacent to other passenger stations – thus creating potential safety hazards and an  
13 additional burden on existing Metro infrastructure and local community residents,  
14 businesses, and service providers including The Endowment’s Center for Healthy  
15 Communities. This burden is not offset by any discernable public benefit.

16  
17           23.     As to the second criteria, Metro’s approval of the Gondola Project is  
18 inconsistent with Metro’s stated long term goals. More specifically, the Gondola Project is  
19 inconsistent with Metro's 2019 Climate Action Plan and planned improvements to the  
20 Forecourt and Esplanade areas in front of Union Station -- all of which promote public  
21 engagement, equity and inclusion in agency decision-making. However, with regard to the  
22 Gondola Project, Metro has not been open or transparent with the public or interested  
23 stakeholders, notwithstanding multiple meetings, letters, and requests for information  
24 about the Project and its potential impacts. For these reasons, Metro’s decision to withhold  
25 fundamental Project information from the public under the guise that this information is  
26 proprietary is inconsistent with Metro's own policies and objectives.

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1           24.     As to the third criteria, the Gondola Project also cannot satisfy an  
2 actual need for Metro. Although the need for increased transit infrastructure in Los  
3 Angeles is significant, the Gondola Project as proposed functions as a private tourist  
4 attraction, not a public transportation line to serve Metro riders. This is evidenced by the  
5 Gondola Project’s lack of any reference to cost, affordability or connectivity to Metro’s  
6 TAP system or any analysis as to whether it may be in the public’s interest to explore  
7 alternate less costly and disruptive measures such as expanding Metro’s existing public  
8 transportation to Dodger Stadium in the form of the Dodger Express busses, which are free  
9 to the public and depart from various points along the Metro route rather than  
10 concentrating entirely at Union Station. The Gondola Project cannot accommodate  
11 Metro's ridership at a comparable price point. Ticket estimates for each trip (per  
12 conversations with Metro) may exceed \$20 per person – making carpooling, ride-sharing  
13 services, or the Dodger Express bus service more affordable and efficient alternatives—  
14 none of which were considered by the OEI in assessing its award of a sole source  
15 agreement to ARTT for this Project.

16  
17           25.     As to the fourth criteria (budget), ARTT has not provided an estimate  
18 for the total cost of the Gondola Project, including operation and maintenance costs since  
19 submitting its application in 2018. (Exh. D, ARRT Response, pp. 35, 43). This lack of  
20 crucial information regarding Gondola Project projected costs means that Metro did not  
21 meet a critical threshold requirement for advancing this Project through Phase I of the OEI  
22 process, namely:

23           “...(iii) satisfies a need for Metro that can be reasonably  
24 accommodated in Metro's annual long-term capital and  
25 operating budgets without displacing other planned  
26 expenditures, without placing other committed projects at risk,  
27 and without significantly increasing the cost of the proposed  
28 items;”



1 of the proposed schedule and Metro's ability to meet activities required; (iv) Metro's  
2 capacity to enter into a contract under its debt authorization; (v) the qualifications,  
3 capabilities and experience of key personnel who are critical in achieving the proposal  
4 objectives; (vi) the relative costs and benefits of the proposal regarding improving mobility  
5 and accessibility in LA County; (vii) the specific details of the cost/revenue generated; and  
6 (viii) any other factors appropriate for the particular proposal. (Exh. A, Unsolicited  
7 Proposals Policy, pp. 5-6).

8  
9           28.     With respect to the first criteria, ARTT appears to lack subject-matter  
10 competency, or the technical skills needed to successfully develop the Gondola Project.  
11 Based on publicly available information, the applicant, Aerial Rapid Transit Technologies  
12 was registered in California very recently, in 2019, and was organized, in Delaware, in  
13 March 2018. In addition, there is no evidence to indicate that members of the ARTT team  
14 have ever designed or constructed an aerial gondola. (Exh. C, ARTT Unsolicited Concept  
15 Proposal, pp. 16-17). There is no evidence indicating the ARTT's experience, facilities, or  
16 techniques make it the appropriate choice for any Gondola Project, much less one in  
17 earthquake prone territory, that purports to move passengers via cables with suspended  
18 gondola cars over a public right of way, a Metro railway (in two places), homes,  
19 apartments, businesses, the freeway, and various communities before climbing uphill to  
20 Dodger Stadium. (Exh. D, ARTT's Response, pp. 31, 35). Aerial gondolas utilizing the  
21 same or similar technology are located around the world. Based on the scope of the  
22 Gondola Project and its location within the public right-of-way, common sense mandates  
23 that at minimum, a multi-million dollar Project of this complexity and scale, should be  
24 competitively bid and awarded to an applicant with the requisite expertise. For these  
25 reasons, Metro's approval of a sole source agreement with ARTT to proceed with this  
26 Gondola Project despite having never built an Aerial Gondola previously or demonstrated  
27 any subject-matter expertise or capacity to build an Aerial Gondola is clearly arbitrary and  
28 capricious.

1           29.     With respect to the second Phase II criteria (financial capability),  
2 ARTT has also failed to demonstrate that the Gondola Project is adequately capitalized.  
3 Without proof of adequate capitalization, the Gondola Project poses a substantial risk that  
4 Metro or Angeleno taxpayers will become responsible for removing or maintaining this ill-  
5 conceived development. Given the lack of a total Project budget, ARTT's financial  
6 capacity to deliver, operate, and maintain the Gondola Project is unsupported by publicly  
7 available documentation. Additionally, it appears that all revenue generated from the  
8 Gondola Project will be entirely private. However, ARTT has provided no information to  
9 the public about revenue projections.

10  
11           30.     With respect to the sixth and seventh Phase II criteria (the cost/benefit  
12 analysis and revenue projections), the very tangible costs, impacts, and burdens that the  
13 Gondola Project will have on the local community greatly outweigh the promised, but  
14 unproven, benefits to a discrete sector of the public who may choose to use a pricey  
15 privately-owned transportation mechanism masquerading as a public transportation project.  
16 The need for real low-cost, commuter and environmentally-friendly alternatives to address  
17 traffic congestion in the downtown area and at Union Station during Dodger game days,  
18 can be dramatically improved by investing in alternatives such as expanding the free  
19 Dodger Express Bus, carpooling, and ride-sharing. In addition, although Metro claims the  
20 Gondola Project would reduce traffic congestion, there is no evidence supporting this  
21 assertion. Available evidence suggests that instead, the Gondola Project will cause  
22 increased traffic congestion, and pedestrian and cyclist safety concerns along Alameda  
23 Street. For example, the location of the Project infrastructure within the public right-of-  
24 way will create narrower traffic lanes in an already congested area, exacerbating traffic  
25 congestion. ARTT has not directly addressed concerns about traffic impacts due to the  
26 Gondola Project's location and lack of additional parking. Instead ARTT makes broad,  
27 unsubstantiated claims about the Gondola Project's ability to meet regional air quality  
28 standards – without considering the indirect impacts on regional traffic and idling likely to



1 result from poor design. Additionally, it remains unclear how Metro will change its  
2 schedule to accommodate potential “extra inning” games where fans may still be at  
3 Dodger Stadium after the gondolas (or other public transit systems) shut down. Finally,  
4 the Gondola Project's proposed location—in the center of bustling downtown Los  
5 Angeles—is likely to lead to an increase in traffic accidents and pedestrian injuries, given  
6 the distracting nature of an aerial gondola system dangling in impacted traffic corridors.  
7 These factors indicate that the Gondola Project’s costs far exceed any discernable benefit  
8 to the public as an alternative transportation option, and therefore, does not satisfy the  
9 Phase II evaluation criteria.

10  
11           31. Based on publicly-available information, the Gondola Project does not  
12 satisfy the Unsolicited Proposals Phase II criteria, and, therefore, the Gondola Project  
13 should not have advanced beyond Phase II. As such, Metro should have rejected the  
14 Gondola Project or requested additional information supporting its determination to  
15 proceed to contract negotiation.

16  
17           Metro Abused its Discretion in Determining the Project Could be Sole Sourced

18  
19           32. Sole source awards are appropriate only in very limited circumstances  
20 where a proposed project could not otherwise proceed. Metro considers a sole source  
21 award only where “it is impossible to describe the property or services offered without  
22 revealing proprietary information or disclosing the originality of thought or innovativeness  
23 of the property or services sought.” (Exh. A, Unsolicited Proposals Policy, p. 7). A sole  
24 source award *may not be based solely on the unique capability of the proposer to provide*  
25 *the specific property or services* proposed. (Exh. A, Unsolicited Proposals Policy, p. 41).

26  
27           33. Here, Metro’s decision to proceed with a sole source award for the  
28 Gondola Project was in error. There is no indication that ARTT is the *only* provider

1 capable of building a gondola system – nor that it is impossible to develop the Gondola  
2 Project without disclosing proprietary information. ARTT admits that other comparable  
3 gondola systems exist throughout the world. Further, some of these systems also use  
4 identical technology to the proposed Gondola Project. ARTT admits that this Gondola  
5 Project would employ the Tricable Detachable Gondola (3S) system – the exact same  
6 technology that can also be found in other cities. (Exh. C, ARTT Unsolicited Proposal, p.  
7 5). There is no evidence that this particular gondola system or technology would be more  
8 innovative or differ in any way from other gondola systems around the world. Further,  
9 there is no evidence that ARTT holds any patents, proprietary design, property rights, or  
10 other distinguishing factors consistent with sole source provider determination. ARTT  
11 makes bold, yet unsupported assertions that it has a “unique ability to deliver the Gondola  
12 Project, including the necessary station location at Dodger Stadium property and  
13 proprietary information that it requires.” (*Id.*, p. 4). However, ARTT has provided no  
14 evidence of a formal agreement with the Dodgers to substantiate this claim.  
15 Notwithstanding the status of ARTT's property acquisitions, Metro's guidelines  
16 specifically state that property access is not sufficient to support a sole source provider  
17 determination (Exh. A, Unsolicited Proposals Policy, p. 7). As such, giving ARTT a sole  
18 source contract simply because it owns the property where the Gondola Project will be  
19 built is not supported by Metro’s policies.

20  
21           34. ARTT also claims that its “proprietary” information regarding “travel  
22 planning for Dodger employees and stadium attendees, rideshare usage information, and  
23 parking lot usage information; and ability to develop and implement necessary  
24 coordination with the Dodger ticketing system.” (Exh. D, ARRT Response, p. 4) qualify  
25 the Gondola Project for a Sole Source Award. However, information regarding Dodger  
26 Stadium's capacity, event schedule, and traffic impacts on surrounding streets are well-  
27 documented in the public record and cannot be considered “proprietary.” Further, public-  
28 facing Gondola Project brochures indicate that the relationship between Dodger Stadium

1 tickets, Metro's ticketing system, system pricing and system implementation have not yet  
2 been designed or negotiated, indicating that this specific information cannot be integral to  
3 developing the Gondola Project nor the basis for which it qualifies for a sole source award.  
4

5           35. Based on publicly-available information, Metro's determination that  
6 the Gondola Project qualifies for a sole source award is not supported by facts or evidence.  
7 For this reason, the ARTT sole source agreement should be terminated because it was an  
8 abuse of discretion to approve the Gondola Project.  
9

10  
11           Metro Abused its Discretion by Proceeding with Contract Negotiation  
12

13           36. Pursuant to its Unsolicited Proposals Policy, Metro may only move  
14 forward with contract negotiation if the following requisites are satisfied:

- 15           i. An Unsolicited Proposal has received a favorable  
16 comprehensive evaluation, including in comparison to any  
17 proposals received following publication as provided in this  
18 policy;  
19           ii. The Metro technical office sponsoring the contract  
20 supports its recommendation, furnishes the necessary funds  
21 and provides a sole-source justification (if applicable); and  
22           iii. Metro CEO or Metro Board of Directors approves (if  
23 required).  
24

25 (Exh. A, Unsolicited Proposals Policy, p. 8).  
26

27           37. Here, for the reasons stated above, Metro's determination that the  
28 Gondola Project satisfies Phase I and Phase II criteria is unsupported by facts or evidence

1 in publicly-available documents. Similarly, Metro’s determination that the Gondola  
2 Project is eligible for sole source procurement is inconsistent with Metro’s Unsolicited  
3 Proposals Policy. Because the Gondola Project did not satisfy these requirements, Metro’s  
4 October 11, 2018 decision to proceed with contract negotiation was arbitrary, capricious,  
5 and in violation of the Unsolicited Proposals Policy.

6  
7 **THE ENDOWMENT NEEDS JUDICIAL REVIEW OF THE DETERMINATION**  
8 **NOW—AFTER ATTEMPTS AT NEGOTIATION FAILED**

9  
10 38. The Endowment is beneficially interested in any outcome regarding  
11 the Gondola Project. As alleged above, The Endowment Headquarters is located  
12 immediately east of the proposed 195-foot Alameda/Alpine Tower, which ARTT plans to  
13 erect in the City right-of-way on Alameda Triangle, as shown in the figure attached as  
14 **Exhibit H**. As a property owner immediately adjacent to the anticipated Gondola  
15 Project’s construction, The Endowment is, therefore, at direct risk if the Gondola Project is  
16 pursued in an inappropriate and/or haphazard manner or if ARTT lacks the financial or  
17 technical capacity to pursue the Gondola Project to a safe conclusion and maintain its  
18 operations for the foreseeable future. Additionally, The Endowment’s offices, non-profit  
19 tenants, and the Center for Healthy Communities (which provides free conference space to  
20 non-profit grantees and public sector institutions throughout Los Angeles County) will be  
21 severely impacted by the construction and disruption along Alameda Street. Indeed, The  
22 Endowment has its own interests and potential future development on its land that may be  
23 impinged if the Gondola Project proceeds. These are precisely the concerns that can (and  
24 must) be raised by interested stakeholders through a public procurement process—but,  
25 because Metro pursued the Gondola Project in secret, The Endowment was unable to  
26 provide comments prior to the MOA being adopted in direct contravention of Metro’s own  
27 policies.

28

1           39.     In addition to its interest as a property owner and taxpayer on land  
2 that will be directly impacted by the Gondola Project, as a private foundation that regularly  
3 partners and supports nonprofit charitable organizations and partners with governmental  
4 agencies to support community well-being and health equity, The Endowment has a  
5 vested interest in ensuring that local agencies (like Metro) comply with and follow their  
6 own rules and procedures. Here, Metro plainly rushed through consideration of the  
7 Gondola Project and advanced it (to the MOA and the sole source award) without doing so  
8 and, therefore, The Endowment has standing to challenge those determinations.

9  
10           40.     As alleged above, The Endowment only discovered the existence of  
11 the Gondola Project in December 2019. For over two years, it has been seeking  
12 information to determine the propriety of Metro’s determination, meeting with Metro staff  
13 and leadership, testifying before the Metro Executive Committee, and raising concerns  
14 about the Gondola Project through formal letters, emails and verbal requests. Despite  
15 these efforts, there remains a shocking lack of concrete details that would demonstrate that  
16 Metro actually possessed sufficient information to make an informed decision to pursue  
17 the Gondola Project with ARTT as its sole source awardee. Advancing the Gondola  
18 Project to this point was a clear abuse of discretion, and The Endowment, as an interested  
19 property owner and stakeholder in Los Angeles County, has the right to challenge Metro’s  
20 actions.

21  
22           41.     Metro’s policies do not present a way for stakeholders and interested  
23 parties (like The Endowment) to challenge Metro’s determination that an unsolicited  
24 proposal satisfies the Unsolicited Proposals Policy, nor is there a mechanism to challenge  
25 the determination to designate a project as sole source. As such, there is no plain, speedy,  
26 or adequate remedy at law other than to seek judicial review via a petition for writ of  
27 mandate. Nor are there any administrative remedies The Endowment must exhaust before  
28 pursuing the extraordinary remedy of mandamus.

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42. The Endowment’s Petition is timely filed. Metro made its sole source determination on October 11, 2018. Petitions for mandamus under Code of Civil Procedure section 1085 have a three-year statute of limitations. However, pursuant to California Emergency Rule of Court, Rule 9, all statutes of limitation were tolled from April 6, 2020 to October 1, 2020. Accordingly, due to this tolling, the Petition is timely filed.

**FIRST CAUSE OF ACTION**

**[Petition for Writ of Mandate – Code of Civil Procedure § 1085]  
[Against All Respondents]**

43. Petitioner respectfully alleges and incorporates herein by reference each and every allegation set forth above.

44. At all times herein mentioned, Metro had a mandatory and ministerial duty to apply its own rules and regulations regarding the procurement and pursuit of unsolicited proposals, and to apply the publicly available evaluation criteria set forth in the Unsolicited Proposals Policy.

45. As set forth above, Metro’s determination to pursue the Gondola Project and to enter into the MOA was arbitrary, capricious and in excess of Metro’s jurisdiction and authority, and were contrary to the controlling law of the State of California and the regulations adopted by Metro to evaluate projects just like the Gondola Project.

46. The Endowment has standing to seek mandamus through this Petition. The Endowment has a clear, present, and beneficial right with respect to the Gondola Project. Cal. Code Civ. Proc. § 1986. As a non-profit property owner in Los Angeles

1 County, whose mission is to improve the fundamental health of all Californians, The  
2 Endowment has an interest in ensuring that massive projects (including those undertaken  
3 by Metro) with the potential to negatively impact communities neighboring its  
4 Headquarters are properly sourced, financed, and pursued so as not to create safety issues  
5 in the surrounding area, nor improper construction that negatively impacts The  
6 Endowment's ability to use its Headquarters, provide free public educational programming  
7 and desperately needed free conference and convening space to non-profit organizations,  
8 grantees and governmental entities through its Center for Healthy Communities. Further,  
9 because The Endowment is seeking to enforce a public right (i.e., to ensure that Metro  
10 complies with its own policies and procedures with respect to massive projects in Los  
11 Angeles County), The Endowment is beneficially interested in ensuring that the public  
12 duties are enforced. Additionally, because The Endowment pays taxes it has an interest in  
13 ensuring that local agencies comply with their own rules and regulations.  
14

15           47. The Endowment has no plain, speedy or adequate remedy in the  
16 ordinary course of law to compel Metro to cease from continuing to engage with ARTT in  
17 pursuit of the Gondola Project. The Endowment is therefore entitled to extraordinary  
18 relief, by means of alternative and peremptory writ of mandate, pursuant to Code of Civil  
19 Procedure sections 1085, *et seq.*, directing and commanding that Metro terminate any  
20 further work on the Gondola Project, revoke the Sole Source Award, and/or terminate the  
21 MOA with LA ART.  
22

23           48. The Endowment is not able to, nor is it obligated to, exhaust any  
24 administrative remedies prior to seeking judicial review. The determinations made by  
25 Metro (that the Gondola Project satisfied the criteria set forth in the Unsolicited Proposals  
26 Policy and could be subject to a Sole Source Award) were made without any opportunity  
27 for the general public and/or interested parties (like The Endowment) to provide  
28 comments. Further, Metro's policies and procedures provide no ability or process through

1 which a party interested in the approval of an unsolicited proposal to proceed and/or be  
2 sole sourced can appeal that decision. As such, The Endowment (which has been  
3 attempting an informal resolution for years with Metro) is properly bringing this Petition at  
4 this time.

5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, The Endowment prays for judgment as follows:

- 8 1. For a judicial determination and declaration that the MOA was improper and  
9 invalid, and the entering into by Metro (through its former CEO), was an abuse of  
10 discretion because Metro did not follow its own policies and procedures with respect to the  
11 Gondola Project;
- 12 2. For issuance of an alternative writ of mandate or order to show cause, and  
13 after a hearing, for issuance of a peremptory writ of mandate, commanding and directing  
14 Metro to terminate the MOA and stop all work on the Gondola Project;
- 15 3. For temporary, preliminary, and permanent injunctive relief restraining  
16 Metro, and any and all parties acting in concert with Metro, from pursuing the Gondola  
17 Project any further pending a full determination of the validity of the MOA;
- 18 4. For recovery from Metro of The Endowment's reasonable attorney's fees  
19 and costs of suit incurred herein; and
- 20 5. For such other and further relief as the Court may deem just and proper  
21 under the circumstances.



1 Dated: March 21, 2022

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Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

*Paul Seeley*

---

PAUL L. SEELEY  
JOSEPH DENAPOLE  
Attorneys for Petitioner  
THE CALIFORNIA ENDOWMENT


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**VERIFICATION**

I, the undersigned, hereby declare as follows:

I am an authorized officer or agent of the Petitioner named in the above entitled action. I have read the foregoing complaint and petition, and know the contents thereof; the foregoing matters are true of my own knowledge, except as to those matters which are therein stated to be based upon Plaintiff and Petitioner's information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct, and that this verification was executed on March <sup>21</sup>\_\_, 2022, at Los Angeles, California.

By  \_\_\_\_\_  
Robert K. Ross, M.D.

# **EXHIBIT A**



FEBRUARY 2016  
LAST REVISED MAY 2018

# UNSOLICITED PROPOSALS POLICY



**Metro**<sup>®</sup>

# Unsolicited Proposals & Public/Private Sector Engagement Policy

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**Metro**<sup>®</sup>

## Overview

### Applicability

This policy and procedure applies to Unsolicited Proposals received by Metro. The Joint Development section of this policy is designed to address unsolicited proposals regarding the acquisition, lease, sale or shared use of Metro real property. Persons interested in submitting an unsolicited proposal for shared use and/or development on Metro-owned property should review that section of this policy, which provides specific details on submitting an Unsolicited Proposal for Joint Development (JD) sites.

### What is an Unsolicited Proposal?

A written proposal that is submitted to Metro on the initiative of the submitter for the purpose of developing a partnership that is not in response to a formal or informal request issued by Metro.

### What distinguishes an Unsolicited Proposal?

It should be:

- > Innovative and pragmatic;
- > Independently originated and developed by the proposer;
- > If submitted by parties external to Metro, prepared without Metro's supervision, endorsement, direction, or direct involvement; and
- > Sufficiently detailed that its benefits in support of Metro's mission and responsibilities are readily apparent.

An Unsolicited Proposal is distinguishable from a project already part of Metro's long-term budget planning process and plan if it uses innovative but pragmatic solutions that offer added value, such as enhanced financing options, improved customer service outcomes or advanced delivery dates. Sales tax bonds and certificates of participation are not unique and innovative financing tools.

### Should proposers interested in a published solicitation submit an Unsolicited Proposal?

No. An Unsolicited Proposal is not any of the following:

- > An offer responding to Metro's previously published expression of need or request for proposals;
- > An advance proposal for property or services that Metro could acquire through competitive methods (submitted within the budget year before release of a published request for proposal); or
- > A replacement for an existing contract that is already in effect; or
- > An opportunity to stipulate the means and methods of an existing contractual relationship.

## Unsolicited Proposals Process Overview

All Unsolicited Proposals shall be submitted to the Metro Vendor / Contract Management (V/CM) office, which will log the proposal and within three business days, then officially transfer it to the Office of Extraordinary Innovation (OEI) for evaluation of technical and/or financial merit. Joint Development Unsolicited Proposals will be transferred to the Joint Development Team.

Metro receives and evaluates Unsolicited Proposals using a two-phased approach, as described below. All Unsolicited Proposals, both in general and for Joint Development, will be evaluated using the two-phased approach, however, the JD process is defined in a separate section of this policy. In Phase One, we evaluate conceptual proposals. Conceptual proposals will be reviewed within 90 days of receipt, at which time a determination will be made as to whether to review additional and detailed information in Phase Two. If there is interest in a conceptual proposal, the proposer may be asked to submit a detailed proposal for

evaluation in Phase Two. In the event that the project proceeds beyond Phase Two or otherwise involves a competitive procurement or sole source procurement, Metro's procurement policies and procedures will apply. Metro may, at any time, choose not to proceed further with any Unsolicited Proposal.

## **Phase One – Conceptual Proposal**

The purpose of Phase One is for Metro to receive written, concept-level proposals and to screen those proposals to determine whether to request additional and detailed information in Phase Two.

### **Threshold Review and Process Overview**

Upon receipt of a conceptual proposal, Metro V/CM staff will take the following steps:

- i. Promptly acknowledge receipt of the proposal (letter to proposer); and
- ii. Determine whether the proposal meets the threshold requirements of an Unsolicited Proposal.

Before initiating a Phase One evaluation, the OEI, in cooperation with V/CM staff, will determine if the conceptual proposal meets the following threshold requirements:

- > Satisfies the definition of an Unsolicited Proposal;
- > Includes all required content and attachments;
- > Contains sufficient detail to enable Metro to perform an adequate evaluation;
- > If submitted by parties external to Metro, has been approved by a responsible official or other representative authorized to contractually obligate the proposer;
- > Complies with the marking requirements for use and disclosure of data;
- > If submitted by parties within Metro, has been approved with signature by a departmental Chief.

If the proposal meets the threshold requirements, Metro V/CM and OEI staff will take the following steps:

- i. V/CM: Log the proposal and assign it a number;
- ii. V/CM: Officially transfer the proposal to OEI staff;
- iii. OEI: Assemble an evaluation team as well as technical and financial subject-matter experts related to the Unsolicited Proposal with the oversight of Vendor/Contract Management;
- iv. OEI: Facilitate the evaluation process as needed; and
- v. OEI: Notify the proposer of Metro's decision. The possible outcomes may be to discontinue the process, proceed to Phase Two, or pursue a competitive procurement. OEI will provide a general explanation of the reasons for the decision, communicate regularly with the Office of the CEO, and seek CEO's approval of recommendations related to implementation.

### **Content – Conceptual Proposal**

Conceptual proposals should include the information identified in the Conceptual Proposal Form (Exhibit C to this policy).

### **Evaluation – Conceptual Proposal**

Conceptual proposals will be evaluated promptly in accordance with the criteria set out in this section. At Phase One, the evaluation process will include the following:

- > If a financial evaluation team has been assembled, that team will have access to the technical proposal for purposes of determining the proposed project scope;
- > The proposer(s) will have no interaction with the evaluation team, except at Metro's sole discretion.

## **Evaluation Criteria – Conceptual Proposal**

If the proposal meets the threshold requirements, the evaluation team, including at least one (1) review team member outside of OEI and V/CM, will determine the evaluation criteria, as necessary, to reflect the specific proposal, but generally will consider the following factors:

- i. The proposal offers direct or anticipated benefits to Metro, its passengers and the community;
- ii. The proposal is consistent with Metro's objectives and goals;
- iii. The proposal satisfies a need for Metro that can be reasonably accommodated in Metro's annual long-term capital and operating budgets without displacing other planned expenditures, without placing other committed projects at risk, and without significantly increasing the cost of the proposed items;
- iv. The proposal offers goods or services that Metro may not have intended to procure or provide through the normal Metro contract process;
- v. If the proposal contains significant financial, technical and legal components, those disciplines have approved an action that proceeds to Phase Two; and
- vi. Are within Metro's jurisdiction or control; and
- vii. Other factors appropriate for the particular proposal.

## **Phase Two – Detailed Proposal**

The purpose of Phase Two is for Metro to receive more detailed technical and financial information to fully understand and evaluate the proposal. At the conclusion of this phase, Metro will decide whether to forego the proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation.

### **Process – Request for Detailed Proposal**

If Metro desires to proceed to Phase Two, OEI will issue a Request for a Detailed Proposal that, in coordination with V/CM, formally tells the proposer to proceed to Phase Two. Depending on the circumstances, the request may include the following:

- > A summary of Phase I Project Evaluation;
- > A description of the request for additional information process and purpose;
- > A description of the problem or opportunity being addressed;
- > Relevant background, context, parameters and policies;
- > Functional, technical and legal requirements;
- > Requests for other project related information related to scope, budget, schedule, personnel, risks, data, performance measurement, potential impacts, etc.;
- > Requests for specific modifications or clarifications to the scope of the original proposal.

Metro may, at its sole discretion and with the participation of V/CM, may invite the proposer(s) to present to the review team, ask and answer questions of the review team, and discuss the proposal and context with the review team.

### **Processing**

Once the detailed proposal is received, the OEI staff will keep and share with V/CM, a record of the persons on the evaluation team and record the final disposition of the proposal. Outside advisors will be consulted only if the Metro evaluation team deems it necessary and beneficial.

### **Content – Detailed Proposal**

In addition to the information provided in Phase One, a detailed proposal must, at a minimum, include the following information.



*Technical information:*

- i. Names and professional information of the proposer's key personnel who would be committed to the project;
- ii. Type of support needed from Metro; e.g., facilities, equipment, materials, or personnel resources; and
- iii. Type of support being provided by the proposer;
- iv. A sufficiently detailed description of the scope of work being offered to allow Metro to evaluate the value received for the price proposed;
- v. Proposed price or total estimated cost for the effort and/or the revenue generated in sufficient detail for meaningful evaluation and cost analysis, including an annual cash flow for the project and annual or future costs to operate and maintain;
- vi. A schedule for the implementation, including specific details for any property and/or services to be provided by Metro; and
- vii. Proposed duration of effort.

*Supporting information:*

- i. Type of contract being sought by the proposer (the final determination on type of contract shall be made by Metro, should Metro decide to proceed with a contract);
- ii. Description of the proposer's organization, previous experience in the field, and facilities to be used;
- iii. Required statements and disclosures, if applicable, about organizational conflicts of interest and environmental impacts; and
- iv. Information, in the form of Metro's Pre-Qualification Application (see Exhibits D & E) demonstrating to Metro that the proposer has the necessary financial resources to complete the project, as determined by Metro and OEI staff. Such information may include (i) financial statements, including an Auditor's Report Letter or an Accountant's Review Letter, Balance Sheets, Statements of Income and Stockholder's Equity, and a Statement of Change in Financial Position; (ii) un-audited balance sheets; (iii) names of banks or other financial institutions with which the proposer conducts business; and (iv) letter of credit commitments.

## **Evaluation – Detailed Proposal**

Detailed proposals will be evaluated promptly, at a minimum in accordance with the criteria set out in this section, as well as any other evaluation criteria identified in the Request for Detailed Proposal.

*Threshold Review:* Before initiating a comprehensive evaluation, the Metro V/CM staff in coordination with OEI, will determine if the detailed proposal continues to meet the threshold requirements set out in Phase One and the requirements specifically set out in the Request for Detailed Proposal.

*Evaluation Criteria:* At Phase Two, the evaluation team will confirm the proposal meets the same evaluation criteria set forth in Phase One, in addition to the following minimum factors, and any additional criteria set out in the Request for Detailed Proposal:

- i. The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives;
- ii. The proposer's financial capacity to deliver the goods or services defined in the proposal;
- iii. Viability of the proposed schedule and Metro's ability to meet activities required;
- iv. Metro's capacity to enter into a contract under its current debt authorization;
- v. The qualifications, capabilities and experience of key personnel who are critical in achieving the proposal objectives;
- vi. The relative costs and benefits of the proposal with respect to improving mobility and accessibility in LA County;
- vii. The specific details of the cost/revenue generated; and
- viii. Any other factors appropriate for the particular proposal.

## **Recommendation**

The evaluation team will make a recommendation on the disposition of the detailed proposal to Metro's Chief Executive Officer for review and approval. If the Board of Directors' approval is required, the proposer will be notified of the date of the meeting when the proposal will be discussed.

## **Full and Open Competition Requirements**

Metro's receipt of an Unsolicited Proposal does not, by itself, justify a contract award without full and open competition. If the Unsolicited Proposal offers a proprietary concept that is essential to contract performance, it may be deemed a Sole Source (see section below). If not, Metro will pursue a competitive procurement, either through a formal solicitation or by the process outlined below. *See Unsolicited Proposal – Competitive Solicitation Process.*

## **Proof of Concept**

Metro may, at its sole discretion, choose to work with an outside party to prove a concept as a means of better understanding an offering and its application and value to Metro, provided that the work is done at the expense of the outside party, and that the work is mutually agreed upon by Metro and the outside party.

## **Unsolicited Proposal – Sole Source Award**

If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, as determined by Metro, Metro may make a sole source award, as provided in Metro's Sole Source Award Policy. A sole source award may not be based solely on the unique capability of the proposer to provide the specific property or services proposed.

## **Unsolicited Proposal – Competitive Solicitation Process**

If the Unsolicited Proposal does not meet the criteria of a sole source award, before entering into a contract resulting from an Unsolicited Proposal, Metro will take the following steps. These steps could occur at any phase of the evaluation process, to be determined by the Metro V/CM and OEI staff.

- a. *Receipt:* Metro will publicize its receipt of the Unsolicited Proposal by posting on Metro's website for purchasing opportunities and advertise in the appropriate publications with general circulation, and in any other relevant trade publications that advertise contracting solicitations.
- b. *Adequate Description:* Metro's publication of its receipt of the Unsolicited Proposal will include an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.
- c. *Interest in the Property or Services:* Metro also will publicize its interest in acquiring the property or services described in the proposal using the same or similar methods provided above.
- d. *Adequate Opportunity to Compete:* Metro will provide an adequate opportunity for interested parties to comment or submit competing proposals, and/or requests for an opportunity to respond within a time frame (minimum of 21 days) specified by Metro's V/CM staff.
- e. *Contract Award Based on Proposals Received:* Finally, Metro will publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication using the same or similar methods provided above.

## **Contract Resulting from an Unsolicited Proposal**

Nothing in this policy or otherwise requires Metro to act or enter into a contract based on an Unsolicited Proposal. Metro, at its sole discretion, may return and/or reject an Unsolicited Proposal at any time during the process.

## **Prerequisites to Contract Negotiation**

The Metro Contracting Officer or other duly authorized Metro representative(s) may commence negotiations only after the following prerequisites have been met.

- i. An Unsolicited Proposal has received a favorable comprehensive evaluation, including in comparison to any proposals received following publication as provided in this policy;
- ii. The Metro technical office sponsoring the contract supports its recommendation, furnishes the necessary funds and provides a sole-source justification (if applicable); and
- iii. Metro CEO or Metro Board of Directors approves (if required).

## **General Proposal Requirements**

### **Prohibition of Use of Confidential Information**

If Metro's decision is to pursue a competitive procurement, Metro personnel shall not use any data, or any confidential patented, trademarked or copyrighted part of an Unsolicited Proposal, or confidential technical or financial proprietary information as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the proposer is notified of and agrees to the intended use. Concepts or ideas are not considered proprietary by Metro but specific implementing methodologies that are unique to the proposer will be recognized.

The V/CM staff shall place a cover sheet (attached as Exhibit B) on the proposal, unless the proposer clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal.

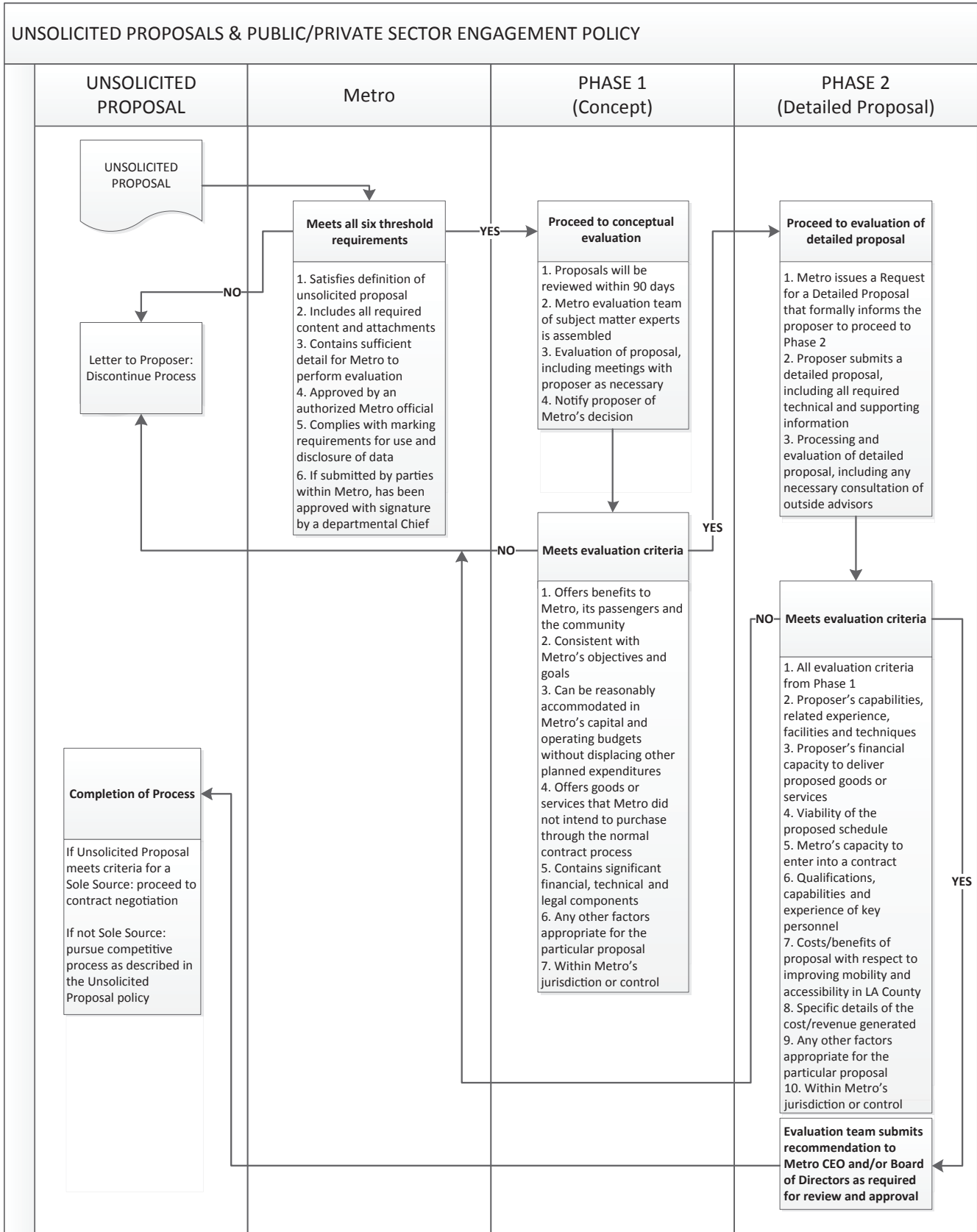
### **Public Records Act**

Unsolicited Proposals are subject to the provisions of the California Public Records Act (California Code Government Code §6250 et seq.).

Public Contract Code Section 22164 provides that: information that is not otherwise a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) shall not be open to public inspection. Any documents provided by the proposer to Metro marked "Trade Secret," "Confidential" or "Proprietary," or any financial records provided by the proposer to Metro, shall be clearly marked with the proposer's name. Metro will use its best efforts to inform the proposer of any request for any financial records or documents marked "Trade Secret," "Confidential" or "Proprietary" provided by proposers to Metro. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

In the event of litigation concerning the disclosure of any records, Metro's sole involvement will be as a stakeholder, retaining the records until otherwise ordered by a court. The proposer, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the records and shall indemnify and hold Metro harmless from all costs and expenses, including attorney's fees in connection with any such action.

# Exhibit A



## **Exhibit B**

UNSOLICITED PROPOSAL  
USE OF DATA PRIOR TO CONTRACT IS PROHIBITED

All Metro personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal.

# Exhibit C

## UNSOLICITED PROPOSALS SUBMITTED TO METRO PHASE ONE: CONCEPTUAL PROPOSAL FORM

Phase One of Metro's Unsolicited Proposal process involves submitting this form. Submit only the information required by this form. If Metro determines that the proposal should proceed to Phase Two, Metro will issue a Request for Detailed Proposal.

### PART 1: BASIC INFORMATION

Proposer Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Further contact information: \_\_\_\_\_

Type of organization: \_\_\_\_\_

Technical personnel names & contact information:

\_\_\_\_\_

Business personnel names & contact information:

\_\_\_\_\_

*These individuals should be responsible for answering Metro's technical or business questions concerning the proposal or any subsequent agreement concerning the proposal.*

### PART 2: TECHNICAL INFORMATION

Title of the proposal: \_\_\_\_\_

Abstract of the proposal is attached

*To move forward in the Unsolicited Proposal process, the abstract must include a brief – but complete – discussion of the following:*

1. Objectives
2. Method of approach
3. Nature and extent of anticipated results; and
4. Manner in which the work will help support accomplishment of Metro's mission.

Technical expertise the proposer needs from Metro: \_\_\_\_\_

### PART 3: FINANCIAL INFORMATION

Proposed price or total estimated cost: \_\_\_\_\_

\_\_\_\_\_

Revenue: \_\_\_\_\_

\_\_\_\_\_

*Be concise but provide sufficient detail for Metro to meaningfully evaluate the proposal.*

Financial information the proposer needs from Metro: \_\_\_\_\_

\_\_\_\_\_

**PART 4: PROCEDURAL INFORMATION**

Period of time for which the proposal is valid: \_\_\_\_\_

- Proprietary data has been submitted with this proposal and is deemed confidential by the proposer in the event of a request submitted to Metro under the California Open Records Act. *Any proprietary data must be clearly designated.*
- Other government entities or private parties have received this proposal.  
Please explain: \_\_\_\_\_
- Other government entities or private parties may provide funding for this proposal.  
Please explain: \_\_\_\_\_
- There are patents, copyrights and/or trademarks applicable to the goods or services proposed.  
Please explain: \_\_\_\_\_
- There is additional information not requested in this form that would allow Metro to evaluate this proposal at this conceptual phase.  
Describe: \_\_\_\_\_

**PART 5: SIGNATURE**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

*The individual who signs this form must be authorized to represent and contractually obligate the Proposer.*

**Exhibit D**



**Los Angeles County  
Metropolitan Transportation Authority  
CONTRACTOR PRE-QUALIFICATION APPLICATION**

---

**Construction Related Projects**

If this Application is being submitted in response to a Request For Proposal (RFP), Invitation For Bid (IFB), or other procurement action, please reference the RFP or IFB name and number in the spaces provided below.

If this Application is not in response to a specific contracting action and is being submitted for general purposes, please write "GENERAL" in the "Name of Procurement" space.

**Name of Procurement:** \_\_\_\_\_

**RFP or IFB Number:** \_\_\_\_\_

**Name of Applicant Firm:** \_\_\_\_\_

**Date Submitted:** \_\_\_\_\_

**Preparer's Name:** \_\_\_\_\_

**THIS PAGE MUST BE COMPLETED AND INCLUDED WITH THE APPLICATION**

**READ THE INSTRUCTIONS  
BEFORE FILLING OUT THE QUESTIONNAIRE**



## PRE-QUALIFICATION APPLICATION INSTRUCTIONS

1. This is a Pre-Qualification Application for the Los Angeles County Metropolitan Transportation Authority (LACMTA). There are two different applications to be used for firms seeking contracts of \$100,000 or greater with the LACMTA.
2. **Which application should you use?** Use the Construction Related Projects application if you are a construction company that will be bidding on any type of construction work. Use the Other than Construction Projects application if you are an engineering firm, consultant, legal firm, product vendor, or other business entity seeking a contract with the LACMTA for the furnishing of goods or services.
3. The application should be completed by a person in the firm who is knowledgeable of and duly authorized to attest to the past and present operations of the firm and its policies. A corporate officer of the firm, owner or partner, as appropriate, must sign the Pre-Qualification Certification form (or Validation form if the firm is already approved).
4. All questions must be answered completely and any Yes answers must be fully explained. Disclaimers, general statements with global qualifications, or notations of Not Applicable (N/A) are not acceptable. Please note that a Yes answer to any question does not automatically result in denial of pre-qualification for a particular procurement.

## DEFINITIONS

1. **Affiliate** is defined as any one of the following: (1) any Firm other than Applicant Firm which owns 25% or more of Applicant Firm, such as parent companies or holding companies; (2) a subsidiary or a Firm in which Applicant Firm owns 25% or more; (3) a Firm in which a major stockholder or owner of Applicant Firm owns controlling interest; (4) a Firm with which Applicant Firm has or has had an unseverable business or professional identity, and (5) any permanent or temporary common business enterprise relationship in which the parties share operating responsibility and profits such as joint ventures.
2. **Key Person** – For purposes of pre-qualification a key person is (1) any person in Applicant Firm who owns 10% or more of the Firm and/or those who make decisions with respect to its operations, finances, or policies, such as the President, CEO, CFO, COO, and, in the case of partnerships, the General Partner(s); (2) Corporate Secretaries and Treasurers, as well as Directors, if they meet criteria #1, above; (3) Division or Regional Business Managers who operate away and independently from the Applicant Firm, but only if the division or regional office is bidding directly with the LACMTA.

## APPLICATION SUBMITTAL

Do not submit applications with bid or proposal, mail or deliver them to:

LACMTA Pre-Qualification Office  
Mail Stop 99-9-1  
One Gateway Plaza  
Los Angeles, CA 90012-2952

**If you have questions, call the Pre-Qualification Office at (213) 922-4130.**

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

**SECTION I: IDENTIFICATION**

**1. Identification Of Applicant Firm**

A. \_\_\_\_\_  
Name of Applicant Firm

B. \_\_\_\_\_  
Address                                      City                                      State                                      Zip Code

C. \_\_\_\_\_  
(Mailing Address, if different from above)

D. \_\_\_\_\_  
(If doing business with the LACMTA under a DBA or other name, include legal name of the company and Tax ID No., if different)

E. Primary Company Telephone No. (    ) \_\_\_\_\_ Fax No. (    ) \_\_\_\_\_

F. Applicant Firm's Contact Person for Pre-Qualification Office follow-up:

\_\_\_\_\_

Print or Type Name	Position	E-Mail	Telephone Number
--------------------	----------	--------	------------------

G. Has the Applicant Firm changed its address or has the Firm or its owner operated under any other name(s) including other DBAs in the past five years? If yes, explain fully on a separate sheet of paper.  
 No                                       Yes

H. Type of business organization: \_\_\_\_\_

YEAR organization established: \_\_\_\_\_ NUMBER of current employees: \_\_\_\_\_

Sole Proprietor                       Corporation  
[Date and State of Incorporation \_\_\_\_\_]

Limited Liability Corporation (LLC)  
[Date and State of Incorporation \_\_\_\_\_]

Limited Partnership (LP)               Limited Liability Partnership (LLP)

General Partnership (GP)  
[Date and State of Partnership filing \_\_\_\_\_]

Other (describe) \_\_\_\_\_

Applicant Firm: \_\_\_\_\_  
 Tax ID No. or SSN: \_\_\_\_\_

- I. List general type of business in which Applicant Firm is engaged (may include more than one). Attach copies of business licenses, if appropriate:

\_\_\_\_\_  
 \_\_\_\_\_

- J. List type of product or service to be provided to the LACMTA.

\_\_\_\_\_  
 \_\_\_\_\_

**SECTION II: OWNERSHIP/MANAGEMENT, PROJECT TEAM MEMBERS, AND RELATED ENTITIES**

**1. Owners/Key Persons**

List Owners and Key Persons of Applicant Firm. For large publicly traded companies, list only Key Persons. (See DEFINITIONS for clarification if necessary.)

Full Legal Name	Title	Social Security No. (last four digits only)	% Of Ownership

[Use additional sheets if necessary]

**2. Related Entities (Affiliates/Subsidiaries/Joint Ventures)**

- A. List affiliates, subsidiaries, holding companies, joint ventures, etc., of Applicant Firm. If no affiliates, state NONE. N/A is not an acceptable answer. Provide organizational, geographical or functional chart, if it would assist in clarifying the line(s) of authority. (See DEFINITIONS for clarification if necessary.)

Affiliate Name & Address	Tel. #	% Owned	Top Executive's Name	*Type of Relation

\*Type of Relationship: 1. Joint Venture (JV), 2. Parent Co (PC), 3. Holding Co (HC), 4. Subsidiary (S), 5. Other (O), please explain.

Applicant Firm: \_\_\_\_\_  
 Tax ID No. or SSN: \_\_\_\_\_

- B. At any time during the past five years have any Owners or Key Persons of Applicant Firm (if yes, explain fully):
1. Served as Key Person, Officer or Director, in any other Firm not affiliated with Applicant Firm?  
 If so, please explain in a separate sheet.  
 No  Yes
  
  2. Had any ownership interest in any other Firm other than shares of publicly owned companies? If so, please explain in a separate sheet.  
 No  Yes

**SECTION III: CONTRACTING HISTORY**

**1. Contracting History**

- A. List the applicant Firm's three largest government contracts, subcontracts, or sales. If none, list the three largest contracts with non-governmental entities.

	Contract #1	Contract #2	Contract #3
Agency/Owner			
Contract No.			
Name/Location			
Describe Goods or Services Furnished			
Were you a Prime or Subcontractor?			
Start Date/Complete Date			
Contract Amount			
Agency/Owner Contact to Verify (Name/Telephone No.)			

NOTE: ANY "YES" ANSWERS BELOW MUST BE FULLY EXPLAINED ON A SEPARATE SHEET OF PAPER AND ATTACHED TO THIS APPLICATION.

- B. Is the Applicant Firm currently certified by the LACMTA or other public agency as a disadvantaged business entity, minority-, or woman-owned business?  
 No  Yes
- C. During the past five years, has Applicant Firm or any of its Key Persons had any certificates or certifications revoked or suspended, including disadvantaged-, minority-, or woman-owned business certifications?  
 No  Yes

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

In the past five years has the Applicant Firm or any Affiliate been the subject of any of the following actions?

- D. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?  
 No  Yes
- E. Failed to complete a contract for a commercial or private owner?  
 No  Yes
- F. Been denied a low-bid contract in spite of being the low bidder?  
 No  Yes
- G. Had a contract terminated for any reason, including default?  
 No  Yes
- H. Had liquidated damages assessed against it during or after completion of a contract?  
 No  Yes

**SECTION IV: CIVIL ACTIONS**

**If "Yes" to Sections IV, V or VI, provide details including a brief summary of cause(s) of action, indicate if Applicant Firm, Key Person or Affiliate Firms were plaintiffs (P) or defendants (D); define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens.  
Complete details are required!**

**1. Violations Of Civil Law**

In the past five years has Applicant Firm, any of its Key Persons, or any Affiliate been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?  
 No  Yes

**2. Lawsuits With Public Agencies**

At the present time is, or during the past five years has, the Applicant Firm, any of its Key Persons, or any Affiliate been a plaintiff or defendant in any lawsuit regarding services or goods provided to the LACMTA or to a public agency?  
 No  Yes

**3. Bankruptcy**

During the past five years, has the Applicant Firm or any Affiliate filed for bankruptcy or reorganization under the bankruptcy laws?  
 No  Yes

**4. Judgments, Liens And Claims**

During the past five years, has the Applicant Firm been the subject of a judgment, lien or claim of \$25,000 or more by a subcontractor or supplier?  
 No  Yes

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

**5. Tax Liens**

During the past five years, has the Applicant Firm been the subject of a tax lien by federal, state or any other tax authority?

No

Yes

**SECTION V: COMPLIANCE WITH LAWS AND OTHER REGULATIONS**

**1. Criminal**

In the past five years has the Applicant Firm, any of its principals, officers, or Affiliates been convicted or currently charged with any of the following:

A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?

No

Yes

B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?

No

Yes

C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?

No

Yes

D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?

No

Yes

E. Non-compliance with the prevailing wage requirements of California or similar laws of any other state?

No

Yes

F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?

No

Yes

G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?

No

Yes

H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?

No

Yes

I. Do any Key Persons in Applicant Firm have any felony charges pending against them that were filed either before, during, or after their employment with the Applicant Firm?

No

Yes

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

## 2. Regulatory Compliance

In the past five years, has Applicant Firm, any of its Key Persons, or Affiliates:

- A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?  
 No  Yes
- B. Been cited for an OSHA or Cal/OSHA "serious violation"?  
 No  Yes
- C. Been cited for a violation of federal, state or local environmental laws or regulations?  
 No  Yes
- D. Failed to comply with California corporate registration, federal, state or local licensing requirements?  
 No  Yes
- E. Had its corporate status, business entity's license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of California, in the last three years?  
 No  Yes

## SECTION VI: ETHICS

### 1. Conflict Of Interest

- A. Does the Applicant Firm or any of its Key Persons have any existing relationships that could be construed as either personal or organizational conflicts of interest, or which would give rise to a conflict if Applicant Firm should be a recipient of a contract with the LACMTA?  
 No  Yes
- B. Has any Owner, Key Person or Project Team member of Applicant Firm ever (if yes, explain fully):
1. Been an employee of the LACMTA, or served as a member of the LACMTA Board of Directors or as an Alternate?  
 No  Yes
  2. Been related by blood or marriage to an LACMTA employee, LACMTA Board member or Alternate?  
 No  Yes

### 2. Political, Charitable, And Other Contributions

Has the Applicant Firm, any of its Key Persons, or Affiliates ever, regardless of amount:

- A. Given (directly or indirectly), or offered to give on behalf of another or through another person, money, contributions (including political contributions), or other benefits, to any current LACMTA Board Member or Alternate?  
 No  Yes

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

- B. Given, or offered to give on behalf of another, money, contributions, or other benefits, directly or indirectly, to any current or former LACMTA employee?  
 No  Yes
- C. Been directed by any LACMTA employee, Board member or Alternate Board member, or contractor to offer or give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member or alternate Board member?  
 No  Yes
- D. Directed any person, including employees or subcontractors, to give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member, Alternate Board member, or to someone else in order to benefit an LACMTA employee, Board member, or Alternate Board member?  
 No  Yes
- E. Been solicited by any LACMTA employee, Board member, or Alternate Board member to make a contribution to any charitable nonprofit organization?  
 No  Yes

IF YES TO ANY OF THE ABOVE, SUBMIT LIST OF CONTRIBUTIONS AND FULL DETAILS.

## SECTION VII: ADDITIONAL DOCUMENTATION REQUIRED

### Copies of the following documents are to be submitted with this application:

1. Applicant Firm's Current Local Business Licenses, if required by city, county or state, and
2. Applicant Firm's Financial Statements (see specific requirements below):
  - A. PUBLICLY TRADED COMPANIES: Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the firm.
  - B. NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS: Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years.
  - C. NON-PUBLICLY TRADED COMPANIES WITHOUT AUDITED OR REVIEWED FINANCIAL STATEMENTS: Company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years. The Chief Financial Officer of the corporation, a partner, or owner, as appropriate, must certify these financial statements.
  - D. SOLE PROPRIETORSHIPS: Refer to C. If financial statements are not generated, please fill out and sign the Financial Statement form (page 10). Submit one form for each of the most recent three years.

**NOTE: The LACMTA reserves the right to ask for additional documentation if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the Applicant Firm will provide to the LACMTA if awarded a contract.**



## Financial Statement

To be completed by Applicant Firms that do not produce company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years (one sheet per year.)

**ASSETS**

Cash on Hand and in Banks ..... \$ \_\_\_\_\_  
 Account and Notes Receivable ..... \$ \_\_\_\_\_  
 Fixed Assets (net of depreciation)..... \$ \_\_\_\_\_  
 Other Assets ..... \$ \_\_\_\_\_  
  
 Total Assets ..... \$ \_\_\_\_\_

**LIABILITIES**

Accounts Payable ..... \$ \_\_\_\_\_  
 Notes Payable to Banks (in next 12 months)..... \$ \_\_\_\_\_  
 Notes Payable to Others..... \$ \_\_\_\_\_  
 Taxes Payable..... \$ \_\_\_\_\_

Long Term Liabilities (more than 12 months)..... \$ \_\_\_\_\_

Other Liabilities ..... \$ \_\_\_\_\_

Total Liabilities ..... \$ \_\_\_\_\_

Net Worth ..... \$ \_\_\_\_\_

**INCOME FROM OPERATIONS**

Revenue ..... \$ \_\_\_\_\_

Interest from Bank Accounts ..... \$ \_\_\_\_\_

Cost of Goods Sold (if appropriate) ..... \$ \_\_\_\_\_

Gross Profit..... \$ \_\_\_\_\_

General & Administrative Expenses..... \$ \_\_\_\_\_

Depreciation..... \$ \_\_\_\_\_

Interest Paid..... \$ \_\_\_\_\_

Net Gain or Loss..... \$ \_\_\_\_\_

This information is provided for pre-qualification purposes only. It is considered a confidential document not subject to public disclosure under California law.

I hereby certify that the above information is true and accurate to the best of my knowledge and belief. I understand false statements may result in denial of pre-qualification, and possible debarment for a period of five years.

\_\_\_\_\_  
 Signature of Owner or Officer

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 For the Year Ended

\_\_\_\_\_  
 Federal ID #



Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

**LACMTA PRE-QUALIFICATION VALIDATION**

A copy of this VALIDATION must be completed and signed by at least one General Partner, Owner, Principal or Officer authorized to legally commit the Applicant Firm.

RFP or IFB Name and Number: \_\_\_\_\_

**DECLARATION**

I, (printed full name) \_\_\_\_\_, Social Security Number \_\_\_\_\_ being first duly sworn, hereby declare that I am the (position or title) \_\_\_\_\_ of (firm name) \_\_\_\_\_, and that I am duly authorized to execute this Validation Statement on behalf of this entity. I acknowledge that any false, deceptive or fraudulent statements on this validation will result in denial of pre-qualification. I hereby state:

the Pre-Qualification Application dated \_\_\_\_\_ on file with LACMTA is correct and current as submitted.

OR

the Pre-Qualification Application dated \_\_\_\_\_ on file with LACMTA is correct and current as submitted, except as modified by the attached changed pages and/or attachments to said Application. (Applicant may attach additional sheets to describe changes). Attach recent financial statements if previous are more than one year old.

\_\_\_\_\_  
Signature of Person Certifying for Applicant Firm

\_\_\_\_\_  
Date

~~~~~  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

(Notary Seal or Stamp)

\_\_\_\_\_  
Notary Public Signature

My Commission expires \_\_\_\_\_

**NOTICE TO APPLICANTS**

A material false statement, omission or fraudulent inducement made in connection with this pre-qualification application is sufficient cause for denial of the application or revocation of a prior approval, thereby precluding the Applicant Firm from doing business with, or performing work for, the LACMTA, either as a vendor, prime contractor, subcontractor, consultant or sub-consultant for a period of three years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges. (Title 18 USC 1001, false statements; California Penal Code Section 132, offering altered or antedated or forged documents or records; and Section 134, preparing false documentary evidence).

NOTE: Applicant information submitted to the LACMTA in connection with pre-qualification is considered confidential. All such applicant information is confidential business information and will be afforded protection to the fullest extent permitted by law.

**Validation Submittal**

**Do not submit validations with bid or proposal, mail or deliver them to:**

LACMTA Pre-Qualification Office  
Mail Stop 99-9-1  
One Gateway Plaza  
Los Angeles, CA 90012-2952

**Exhibit E**



**Los Angeles County  
Metropolitan Transportation Authority  
CONTRACTOR PRE-QUALIFICATION APPLICATION**

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**Other Than Construction Projects**

If this Application is being submitted in response to a Request For Proposal (RFP), Invitation For Bid (IFB), or other procurement action, please reference the RFP or IFB name and number in the spaces provided below.

If this Application is not in response to a specific contracting action and is being submitted for general purposes, please write "GENERAL" in the "Name of Procurement" space.

**Name of Procurement:** \_\_\_\_\_

**RFP or IFB Number:** \_\_\_\_\_

**Name of Applicant Firm:** \_\_\_\_\_

**Date Submitted:** \_\_\_\_\_

**Preparer's Name:** \_\_\_\_\_

**THIS PAGE MUST BE COMPLETED AND INCLUDED WITH THE APPLICATION**

**READ THE INSTRUCTIONS  
BEFORE FILLING OUT THE QUESTIONNAIRE**

## PRE-QUALIFICATION APPLICATION INSTRUCTIONS

1. This is a Pre-Qualification Application for the Los Angeles County Metropolitan Transportation Authority (LACMTA). There are two different applications to be used for firms seeking contracts of \$100,000 or greater with the LACMTA.
2. **Which application should you use?** Use the Construction Related Projects application if you are a construction company that will be bidding on any type of construction work. Use the Other than Construction Projects application if you are an engineering firm, consultant, legal firm, product vendor, or other business entity seeking a contract with LACMTA for the furnishing of goods or services.
3. The application should be completed by a person in the firm who is knowledgeable of and duly authorized to attest to the past and present operations of the firm and its policies. A corporate officer of the firm, owner or partner, as appropriate, must sign the Pre-Qualification Certification form (or Validation form if the firm is already approved).
4. All questions must be answered completely and any Yes answers must be fully explained. Disclaimers, general statements with global qualifications, or notations of Not Applicable (N/A) are not acceptable. Please note that a Yes answer to any question does not automatically result in denial of pre-qualification for a particular procurement.

## DEFINITIONS

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2. **Key Person** – For purposes of pre-qualification a key person is (1) any person in Applicant Firm who owns 10% or more of the Firm and/or those who make decisions with respect to its operations, finances, or policies, such as the President, CEO, CFO, COO, and, in the case of partnerships, the General Partner(s); (2) Corporate Secretaries and Treasurers, as well as Directors, if they meet criteria #1, above; (3) Division or Regional Business Managers who operate away and independently from the Applicant Firm, but only if the division or regional office is bidding directly with the LACMTA.

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Mail Stop 99-9-1  
One Gateway Plaza  
Los Angeles, CA 90012-2952

**If you have questions, call the Pre-Qualification Office at (213) 922-4130.**



Applicant Firm: \_\_\_\_\_  
 Tax ID No. or SSN: \_\_\_\_\_

I. List general type of business in which Applicant Firm is engaged (may include more than one).  
 Attach copies of business licenses, if appropriate:

\_\_\_\_\_  
 \_\_\_\_\_

J. List type of product or service to be provided to the LACMTA.

\_\_\_\_\_  
 \_\_\_\_\_

**SECTION II: OWNERSHIP/MANAGEMENT, PROJECT TEAM MEMBERS, AND RELATED ENTITIES**

**1. Owners/Key Persons (Pres, CEO, COO, CFO, etc)**

List Owners and Key Persons of Applicant Firm. For large publicly traded companies, list only Key Persons. (See DEFINITIONS for clarification if necessary.)

| Full Legal Name | Title | Social Security No. (last four digits only) | % Of Ownership |
|-----------------|-------|---------------------------------------------|----------------|
|                 |       |                                             |                |
|                 |       |                                             |                |
|                 |       |                                             |                |

[Use additional sheets if necessary]

**2. Affiliations**

A. List Affiliates, subsidiaries, holding companies, joint ventures, etc., of Applicant Firm. If no affiliates, state NONE. N/A is not an acceptable answer. Provide organizational, geographical or functional chart, if it would assist in clarifying the line(s) of authority. (See DEFINITIONS for clarification if necessary.)

| Affiliate Name & Address | Tel. # | % Owned | Top Executive's Name | *Type of Relation |
|--------------------------|--------|---------|----------------------|-------------------|
|                          |        |         |                      |                   |
|                          |        |         |                      |                   |
|                          |        |         |                      |                   |
|                          |        |         |                      |                   |

\*Type of Relationship: 1. Joint Venture (JV), 2. Parent Co (PC), 3. Holding Co (HC), 4. Subsidiary (S), 5. Other (O), please explain.

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

- B. At any time during the past five years have any Owners or Key Persons of Applicant Firm (if yes, explain fully):
1. Served as Key Person, Officer or Director, in any other Firm not affiliated with Applicant Firm? If so, please explain in a separate sheet.  
 No  Yes
  2. Had any ownership interest in any other Firm other than shares of publicly owned companies? If so, please explain in a separate sheet.  
 No  Yes

### SECTION III: CIVIL ACTIONS

**If "Yes" to Sections III, IV, or V, provide details including a brief summary of cause(s) of action, indicate if Applicant Firm, Key Person or Affiliate Firms were plaintiffs (P) or defendants (D); define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens.**

**Complete details are required.**

**1. Violations Of Civil Law**

In the past five years has Applicant Firm, any of its Key Persons, or any Affiliate been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?  
 No  Yes

**2. Lawsuits With Public Agencies**

At the present time is, or during the past five years has, the Applicant Firm, any of its Key Persons, or any Affiliate been a plaintiff or defendant in any lawsuit regarding services or goods provided to the LACMTA or to a public agency?  
 No  Yes

**3. Bankruptcy**

During the past five years, has the Applicant Firm or any Affiliate filed for bankruptcy or reorganization under the bankruptcy laws?  
 No  Yes

**4. Tax Liens**

During the past five years, has the Applicant Firm been the subject of a tax lien by federal, state or any other tax authority?  
 No  Yes



## SECTION IV: COMPLIANCE WITH LAWS AND OTHER REGULATIONS

### 1. Criminal

In the past five years has the Applicant Firm, any of its principals, officers, or Affiliates been convicted or currently charged with any of the following:

- A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?  
 No  Yes
- B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?  
 No  Yes
- C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?  
 No  Yes
- D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?  
 No  Yes
- E. Non-compliance with the prevailing wage requirements of the California or similar laws of any other state?  
 No  Yes
- F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?  
 No  Yes
- G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?  
 No  Yes
- H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?  
 No  Yes
- I. Do any Key Persons in Applicant Firm have any felony charges pending against them that were filed either before, during, or after their employment with the Applicant Firm?  
 No  Yes

### 2. Regulatory Compliance

In the past five years, has Applicant Firm, any of its Key Persons, or Affiliates:

- A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?  
 No  Yes

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

- B. Failed to comply with California corporate registration, federal, state or local licensing requirements?  
 No  Yes
- C. Had its corporate status, business entity's license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of California, in the last three years?  
 No  Yes
- D. During the past five years, has Applicant Firm or any of its Key Persons had any certificates or certifications revoked or suspended, including disadvantaged-, minority-, or woman-owned business certifications?  
 No  Yes
- E. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?  
 No  Yes

**SECTION V: ETHICS**

**1. Conflict Of Interest**

- A. Does the Applicant Firm or any of its Key Persons have any existing relationships that could be construed as either personal or organizational conflicts of interest, or which would give rise to a conflict if Applicant Firm should be a recipient of a contract with the LACMTA?  
 No  Yes
- B. Has any Owner, Key Person or Project Team member of Applicant Firm ever (if yes explain fully):
  - 1. Been an employee of the LACMTA, or served as a member of the LACMTA Board of Directors or as an Alternate?  
 No  Yes
  - 2. Been related by blood or marriage to an LACMTA employee, LACMTA Board member or Alternate?  
 No  Yes

**2. Political, Charitable, And Other Contributions**

- Has the Applicant Firm, any of its Key Persons, or Affiliates ever, regardless of amount:
- A. Given (directly or indirectly), or offered to give on behalf of another or through another person, money, contributions (including political contributions), or other benefits, to any current LACMTA Board member or Alternate?  
 No  Yes
  - B. Given, or offered to give on behalf of another, money, contributions, or other benefits, directly or indirectly, to any current or former LACMTA employee?  
 No  Yes

Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

- C. Been directed by any LACMTA employee, Board member or Alternate Board member, or contractor to offer or give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member or alternate Board member?  
 No  Yes
- D. Directed any person, including employees or subcontractors, to give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member, Alternate Board member, or to someone else in order to benefit an LACMTA employee, Board member, or Alternate Board member?  
 No  Yes
- E. Been solicited by any LACMTA employee, Board member, or Alternate Board member to make a contribution to any charitable nonprofit organization?  
 No  Yes

IF YES TO ANY OF THE ABOVE, SUBMIT LIST OF CONTRIBUTIONS AND FULL DETAILS.

## SECTION VI: ADDITIONAL DOCUMENTATION REQUIRED

**Copies of the following documents are to be submitted with this application:**

1. Applicant Firm's Current Local Business Licenses, if required by city, county or state, and
2. Applicant Firm's Financial Statements (see specific requirements below):
  - A. PUBLICLY TRADED COMPANIES: Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the firm.
  - B. NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS: Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years.
  - C. NON-PUBLICLY TRADED COMPANIES WITHOUT AUDITED OR REVIEWED FINANCIAL STATEMENTS: Company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years. The Chief Financial Officer of the corporation, a partner, or owner, as appropriate, must certify these financial statements.
  - D. SOLE PROPRIETORSHIPS: Refer to C. If financial statements are not generated, please fill out and sign the Financial Statement form (page 9). Submit one form for each of the most recent three years.

**NOTE: The LACMTA reserves the right to ask for additional documentation if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the Applicant Firm will provide to the LACMTA if awarded a contract.**





Applicant Firm: \_\_\_\_\_  
Tax ID No. or SSN: \_\_\_\_\_

**LACMTA PRE-QUALIFICATION VALIDATION**

A copy of this VALIDATION must be completed and signed by at least one General Partner, Owner, Principal or Officer authorized to legally commit the Applicant Firm.

RFP or IFB Name and Number: \_\_\_\_\_

**DECLARATION**

I, (printed full name) \_\_\_\_\_, Social Security Number \_\_\_\_\_ being first duly sworn, hereby declare that I am the (position or title) \_\_\_\_\_ of (firm name) \_\_\_\_\_, and that I am duly authorized to execute this Validation Statement on behalf of this entity. I acknowledge that any false, deceptive or fraudulent statements on this validation will result in denial of pre-qualification. I hereby state:

the Pre-Qualification Application dated \_\_\_\_\_ on file with LACMTA is correct and current as submitted.

OR

the Pre-Qualification Application dated \_\_\_\_\_ on file with LACMTA is correct and current as submitted, except as modified by the attached changed pages and/or attachments to said Application. (Applicant may attach additional sheets to describe changes). Attach recent financial statements if previous are more than one year old.

\_\_\_\_\_  
Signature of Person Certifying for Applicant Firm

\_\_\_\_\_  
Date

~~~~~  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

(Notary Seal or Stamp)

\_\_\_\_\_  
Notary Public Signature

My Commission expires \_\_\_\_\_

**NOTICE TO APPLICANTS**

A material false statement, omission or fraudulent inducement made in connection with this pre-qualification application is sufficient cause for denial of the application or revocation of a prior approval, thereby precluding the Applicant Firm from doing business with, or performing work for, the LACMTA, either as a vendor, prime contractor, subcontractor, consultant or sub-consultant for a period of three years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges. (Title 18 USC 1001, false statements; California Penal Code Section 132, offering altered or antedated or forged documents or records; and Section 134, preparing false documentary evidence).

NOTE: Applicant information submitted to the LACMTA in connection with pre-qualification is considered confidential. All such applicant information is confidential business information and will be afforded protection to the fullest extent permitted by law.

**Validation Submittal**

**Do not submit validations with bid or proposal, mail or deliver them to:**

LACMTA Pre-Qualification Office  
Mail Stop 99-9-1  
One Gateway Plaza  
Los Angeles, CA 90012-2952

## 1. Definition of Unsolicited Proposal for Joint Development

An unsolicited proposal (“Unsolicited Proposal” or “proposal”) is a written proposal that is submitted to Metro on the initiative of a prospective offeror (organizations or individuals) (“Offeror”) for the purpose of developing a partnership that is not in response to a formal or informal request issued by Metro. For the purposes of the Unsolicited Proposals & Public/Private Sector Engagement Policy (“UP Policy”), as well as the Metro Joint Development Program: Policies and Process document (“JD Policy”), a Joint Development (“JD”) Unsolicited Proposal would seek the right to develop or improve property owned by Metro.

A valid Unsolicited Proposal must:

- a. Be innovative and unique, offering a development proposal with unique characteristics or benefits;
- b. Be independently originated and developed by the Offeror;
- c. Be prepared without Metro’s supervision, endorsement, direction, or direct involvement;
- d. Be sufficiently detailed that its benefits in support of Metro’s mission and responsibilities are apparent;
- e. Not be an advance proposal for property development that Metro could acquire through competitive methods;
- f. Not be an offer responding to Metro’s previously published expression of need or request for Joint Development proposals.

The Unsolicited Proposal is submitted by the Offeror with the objective of obtaining an Exclusive Negotiation Agreement and Planning Document (ENA) with Metro. (See Section 2 of this JD UP Policy for expected contents of Unsolicited Proposals).

Note that Unsolicited Proposals for all other Metro services, programs or efforts should follow the guidance in Metro’s Unsolicited Proposals & Public/Private Sector Engagement Policy (as opposed to this JD UP Policy).

## 2. Submission Process and Evaluation

Similar to the UP Policy, all JD Unsolicited Proposals shall be submitted to the Metro Vendor / Contract Management (V/CM) office, which will log the proposal and within three business days, officially transfer it to the Joint Development Team for evaluation of technical and/or financial merit.

Metro receives and evaluates Unsolicited Proposals using a two-phased approach, followed by any publication requirements as described below. Phase One includes a basic threshold review and evaluation of conceptual proposals. Conceptual proposals will be reviewed within 60 days of receipt, at which time a determination will be made as to whether to request additional and detailed information in Phase Two. If a Proposer is requested to submit information for Phase Two and the project proceeds beyond Phase Two, Metro’s procurement policies and procedures will apply. This process is described further below. Metro may, at any time, choose not to proceed further with any Unsolicited Proposal.

### A. Phase One – Conceptual Proposal

The purpose of Phase One is for Metro to receive written, concept-level proposals and to screen those proposals to determine whether to request additional and detailed information in Phase Two.

1) *Threshold Review*

Upon receipt of a conceptual proposal, Metro V/CM staff will take the following steps:

- a. Promptly acknowledge receipt of the proposal (letter to Offeror); and
- b. Determine whether the proposal meets the threshold requirements of a JD Unsolicited Proposal.

Before initiating a Phase One evaluation, the Metro JD Team, in cooperation with V/CM staff, will determine if the conceptual proposal meets the following threshold requirements:

- a. Satisfies and meets the elements of a JD Unsolicited Proposal as defined in Section 1 of this JD UP Policy;
- b. Contains sufficient technical and cost information to permit a meaningful evaluation (see Conceptual Proposal Requirements below);
- c. Has been approved by an authorized representative of the Offeror or a person authorized to contractually obligate the Offeror;
- d. Includes a general project concept that meets Metro and JD objectives as stated in the JD Policy; and
- e. Complies with the marking requirements for use and disclosure of data.

If the JD Conceptual Proposal does not meet the preliminary requirements above, the Offeror may be given the opportunity to provide the required data and/or may be advised that Metro is not interested in pursuing further action with respect to the proposal.

If the proposal meets the threshold requirements, Metro V/CM and JD staff will take the following steps:

- a. V/CM: Log the proposal and assign it a number;
- b. V/CM: Officially transfer the proposal to JD staff;
- c. JD and V/CM: Set and notify the Offeror of the schedule for internal evaluation;
- d. JD: Assemble an evaluation team that includes a V/CM staff member, as well as technical and financial subject-matter experts related to the JD Unsolicited Proposal;
- e. JD: Facilitate the evaluation process as needed;
- f. V/CM: If the evaluation team deems necessary, V/CM will issue a written request for clarification to the Offeror;
- g. JD: Conduct outreach to impacted stakeholders as needed; and
- h. JD and V/CM: Notify the Office of the CEO and then the Offeror of Metro's decision. The possible outcomes may be to discontinue the process, proceed to Phase Two, or pursue a competitive procurement. JD staff will provide a general explanation of the reasons for the decision.



2) *Content – Conceptual Proposal*

Conceptual proposals should include the information identified in the Conceptual Proposal Form (Exhibit 2 to this JD UP Policy).

3) *Evaluation – Conceptual Proposal*

Once it is determined that the JD Conceptual Proposal is complete and is determined to be a project of interest to Metro, the proposal will be evaluated promptly in accordance with the criteria set out in this section.

4) *Consideration of an Unsolicited Conceptual Proposal* – An Unsolicited Proposal is more likely to be considered for further action if the Unsolicited Proposal is (1) adjacent to a Metro property that is small or constrained by transit infrastructure or other nearby development; and/or (2) from an adjacent landowner(s) (or Offeror with site control of adjacent properties) that make the Metro site feasible for development or better able to achieve Metro's Transit Oriented Communities objectives. Other criteria for consideration of the proposal will include but is not limited to:

- a. It offers an added benefit, beyond the proposed development, that Metro had either not planned for or had considered but had not budgeted for, such as a transit improvement or an expansion of transit services;
- b. It provides public improvements that support active transportation (beyond what would be required in a regular development process);
- c. The Offeror is, or has partnered with, a community-based organization with a track record of community engagement, investment and provision of services within the community where the proposed project is located;
- d. It includes uses that provide significant community benefit or meet desired community uses. The proposed benefit or uses should be documented by a recent (within five years) plan – a land use plan, vision plan, or other study or report that cites the need for the proposed use;
- e. The Offeror (and/or Offeror's development team) shows a clear commitment to a robust community engagement process in the further development of their project plans; and
- f. It includes unique or innovative methods, approaches, financing mechanism or an idea that have originated with or are assembled by the Offeror.

During this Phase One evaluation, the process may include review of the technical proposal by a financial consultant, as well as an urban design/architectural consultant. During the evaluation process, the Offeror(s) will have no interaction with the evaluation team. If Metro desires to proceed to Phase Two, Metro V/CM will issue a Request for a Detailed Proposal that formally invites the Offeror to submit a Phase Two proposal. This request will include expected timelines for submission and evaluation, and offer the opportunity to request a meeting with Metro staff. A copy of Metro's standard Exclusive Negotiation Agreement and Planning Document (ENA) will also be provided.

5) *Rejection of an Unsolicited Conceptual Proposal* – Metro shall return an Unsolicited Proposal to an Offeror, citing reasons, when its substance meets any of the following criteria:

- a. It is available to Metro without restriction from another source;
- b. It closely resembles a pending competitive requirement; or
- c. It does not demonstrate an innovative and unique method, approach, or concept, or if it does, another method, approach, or concept may be available to Metro on the basis of competitive proposals.

If it is determined that the proposal is unacceptable, the proposal shall be returned to the Offeror together with the reasons for the return.

*B. Phase Two – Detailed Proposal*

The purpose of Phase Two is for Metro to receive more detailed technical and financial information to fully understand and evaluate the proposal. At the conclusion of this phase, Metro will decide whether to forego the proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation.

*1) Content – Detailed Proposal*

Phase Two of the JD Unsolicited Proposal should contain the following information in order to permit consideration in an objective and timely manner.

- a. **Basic Information.** Identify the legal entity that would serve as the principal in the proposed development and indicate the type of entity (e.g. for-profit, non-profit, LLC, etc.); provide names, telephone numbers and email addresses of the Offeror’s technical and business personnel whom Metro may contact for evaluation or negotiation purposes; indicate the date of submission and the period of time for which the proposal is valid (a minimum of six months is suggested); ensure the proposal is signed by a responsible official or representative of the Offeror, or a person authorized to contractually obligate the Offeror.
- b. **Project Description and Development Program.** This includes a concise title and description of the proposed project (approximately 200 words); a clear description of the proposed development program (square footage for each use, including open space and parking); description of community benefits associated with the project, such as affordable housing, open space or plazas, new community-serving amenities, etc.; description of how the proposed project interfaces with the transit facility (if applicable) and the active transportation environment within the community.
- c. **Development Team.** Include a list of key team members and their particular role in the project. Provide a brief history of the experience of key team members, focused only on related project work.
- d. **Preliminary Design Concept.** Include site plans, site sections, circulation/public realm plan, program/use diagrams and renderings consistent with the project description and development program.
- e. **Community Engagement.** Describe the proposed community engagement process for the project, and any community engagement that may have occurred leading up to the Unsolicited Proposal.
- f. **Development Proforma.** Provide a predevelopment budget, development budget, 15-year operating proforma and capital structure. Provide a financing plan that clearly indicates anticipated funding sources, both debt and equity. Describe proposed funding of transit improvements as may be contemplated in the Offeror’s plans.

- g. Offeror's Financing Capacity. Submit information that fully demonstrates the team's financial capacity and readiness to develop the proposed project. This includes a demonstrated track record in structuring public/private partnerships (if this model is applicable to the proposal), relationships with financial institutions and access to predevelopment funding. To demonstrate this capacity, provide three examples of transactions the team has completed in the last 10 years that are similar/relevant to the proposed project. For these examples: (1) Indicate the sources and uses of both debt and equity financing for each component of the project; (2) Describe experience with public financing sources (if applicable to the proposed project), such as the Economic Development Administration, New Markets Tax Credits, US Department of Housing and Urban Development Financing, etc; and (3) Provide any other relevant information that demonstrates capacity to structure and finance the proposed project.
- h. Development Timeline. Provide a timeline for the entitlement and completion of development, noting community engagement efforts. If applicable, note how access to transit facilities would be maintained during construction.
- i. Financial Offer to Metro. It is in the best interest of Offerors to submit their best financial offer. Describe areas to be ground-leased and associated square footages; include length of lease, base and percentage rents and the basis of periodic escalations and adjustments. Regardless of the proposed ground lease structure, Metro expects to receive a fair market value (FMV) rent for the project site. To the extent that a discounted FMV is being requested, pursuant to the JD Policy's allowance for affordable housing, the discount must be to reduce a justified financial "gap" in the overall project pro forma. State any offer of participation in a percentage rent of gross revenue from all income-producing land uses. Metro requires a \$50,000 ENA Fee. Annual holding rent as a percent of annual base rent for each development phase according to a predetermined schedule, until the start of construction is also required. Metro requires an annual construction rent as a percent of annual base rent for the period of time that the project is under construction until such time as the permanent base rent commences. State any offer of participation in sale or refinancing proceeds.
- j. ENA. If the Offeror desires any modifications to the standard ENA, this request should be included in the Phase Two submission.
- k. Proprietary Data. Identify any proprietary data which the Offeror intends to be used by Metro only for evaluation purposes (see Section 5 below).

2) *Evaluation Criteria – Detailed Proposal*

Before initiating a comprehensive evaluation, Metro V/CM staff in coordination with JD staff, will determine if the detailed proposal continues to meet the threshold requirements set out in Phase One and the requirements specifically set out in the Request for Detailed Proposal. In addition the following minimum factors will be considered:

- a. Qualifications, related experience or unique combination of those, of the Offeror;
- b. The qualifications, capabilities and experience of the proposal team leader or key personnel who are critical to achieving the proposal objectives;
- c. Integration with transit facilities and active transportation infrastructure;
- d. Opportunity for transit improvements associated with the proposal;

- e. Economic and regulatory feasibility of the proposed project;
- f. Quality of design;
- g. Provision of community benefits;
- h. Inclusion of SBE/DBE/DVBE and CBOs on project team;
- i. The proposal offers innovative and unique characteristics;
- j. Financial offer; and
- k. Any other factors appropriate for the particular proposal.

3) *Evaluation Process – Detailed Proposal*

Detailed proposals will be evaluated promptly, at a minimum in accordance with the criteria set out in this section, as well as any other evaluation criteria identified in the Request for Detailed Proposal. Outside advisors will be consulted if the Metro evaluation team deems it necessary and beneficial. The evaluation team may also request clarification, which V/CM will submit in writing to the Offeror.

Upon completion of the Phase Two evaluation, JD staff will keep and share with V/CM, a record of the persons on the evaluation team and record the final recommendation for the proposal. If the evaluation team determines that the Phase Two proposal is unacceptable, the proposal shall be returned to the Offeror together with the reasons for the return. If Metro determines that the Phase Two proposal should continue in the process, JD staff will prepare a memo to the CEO summarizing the evaluation results and recommending the appropriate further action. Section 3 below describes the next steps.

### **3. Full and Open Competition / Stakeholder Outreach / Final Recommendations**

A. *Full and Open Competition*

Metro’s receipt of an Unsolicited Proposal does not, by itself, justify a contract award without full and open competition. If the Unsolicited Proposal offers a proprietary concept that is essential to contract performance, it will be deemed a Sole Source (see section below). If not, Metro will respond to the Unsolicited Proposal by following federal procurement guidelines for competitive procurement. In addition, Metro is committed to engaging stakeholders in the JD Process. For JD Unsolicited Proposals that have been recommended to move beyond Phase Two, Metro will take the following steps.

- 1) *Unsolicited Proposal – Sole Source Award*: If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, as determined by Metro, Metro may make a sole source award, as provided in Metro’s Sole Source Award Policy. A sole source award may not be based solely on the unique capability of the Offeror to provide the specific property or services proposed.
- 2) *Unsolicited Proposal – Competitive Solicitation Process*: If the Unsolicited Proposal is not determined to be a sole source, Metro staff will notify the Board of Directors and the Offeror before publishing the Unsolicited Proposal in accordance with guidance from FTA Circular 4220.1.F, as it may be amended from time to time:
  - a. Publicize the Unsolicited Proposal. The publication shall follow Metro’s standard procurement practices (as established by Metro Vendor/Contract Management

Department) and shall clearly state that Metro received the Unsolicited Proposal, and provide an adequate description of the proposal, without improperly disclosing proprietary information or disclosing the originality of thought or innovation of the proposal.

- b. Interest in the Property or Services. The publication shall make clear Metro's interest in the specifics of the proposed project.
- c. Adequate Opportunity to Compete and/or Submit Comments. Provide an adequate opportunity for interested parties to comment or submit competing proposals. In most instances, the Unsolicited Proposal will be posted for 30 days.
- d. Contract Award Based on Proposals Received. Publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication (provided that Metro reserves its right to take any of the actions set forth in Section 3C below).

The purpose of this publication process is to ascertain whether other parties may desire and be able to offer a project within a scope that is similar to that contemplated within the original Unsolicited Proposal. Metro's publication will give notice of the basic business elements of the original Unsolicited Proposal and inform interested parties that they may provide comment on the proposal or submit competing proposals within the comment/submission dates provided. The publication shall not disclose proprietary information as defined in Section 3A. The publication will instruct parties to follow the Phase One submission instructions and requirements.

Any proposals received, including the original Unsolicited Proposal, shall be evaluated based on the criteria listed in Section 2B above, as well as the objectives listed in the JD Policy. Metro will make clear the evaluation criteria prior to publicizing the Unsolicited Proposal.

There are four potential outcomes for this publication. These are described below in Section 3C.

#### B. Stakeholder Outreach

If Metro intends to move forward with the Unsolicited Proposal after the Phase Two evaluation, JD staff will conduct preliminary outreach to targeted stakeholders, including local elected officials, staff of municipalities where the subject property is located, and key community and business stakeholder groups. This outreach will be focused on informing stakeholders of the Unsolicited Proposal received and Metro's intended next steps – whether it is a Sole Source or the Competitive Procurement process.

#### C. Final Review and Recommendation

After posting ends, Metro staff will negotiate and make recommendations based on one of four scenarios:

- 1) *Metro receives no additional proposals and decides to pursue the original Unsolicited Proposal.* In this case, Metro may conduct a secondary review of the original Unsolicited Proposal and reserves the right to request additional material that will assist Metro in determining that the Offeror has the technical capability and financial resources to perform the contract and meet Metro's requirements for negotiating and executing an ENA. Once all evaluation is complete and ENA terms are negotiated, Metro staff may bring a recommendation forward to the Board of Directors to authorize execution of the ENA.
- 2) *Metro receives additional proposals and desires to further evaluate and negotiate with one of the Offerors, be it the original Offeror or one of the new proposals received as a result of the publication.*

New proposals will be evaluated in accordance with the Phase One evaluation process described in Section 2A. If a new Offeror is invited to submit a Phase Two proposal, they shall be granted the same period of time given to the original Offeror to submit a Phase Two proposal. The new Offeror shall be provided with the same information if any, as the original Offeror. Metro may also conduct a secondary review of the original proposal and reserves the right to request additional material that will assist Metro in determining that the Offeror has the technical capability and financial resources to perform the contract and meet Metro's requirements for negotiating and executing an ENA. Once all evaluation is complete Metro staff may proceed with negotiations with one of the new Offerors or the original Offeror and bring a recommendation forward to the Board of Directors to authorize execution of the ENA. Offerors will be notified of such decision and proposal materials returned.

- 3) *Metro receives additional proposals and, based on this evidence of interest, determines that it is in Metro's best interest to conduct a full competitive procurement.* In this case, all proposals received under this policy would be rejected and returned to the submitting parties and Metro shall inform all Offerors (including the original Offeror) of its intentions regarding a subsequent competitive solicitation process. The new solicitation process shall be conducted in accordance with the process set forth in the JD Policy.
- 4) *Regardless of the number of proposals received, Metro may determine that it is in its best interests not to move forward with any proposal.* All Offerors will be notified of such decision and proposal materials returned.

#### **4. Submission Instructions and Time for Submission**

JD Unsolicited Proposals shall be submitted to:  
Vendor/Contract Management  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, 99-9-55  
Los Angeles, CA 90012

Offeror shall submit four (4) hard copies of the proposal, along with an unalterable electronic version on CD or flash drive. Phase One proposals shall not exceed 15 pages. There are no page requirements on Phase Two submissions, but proposals should be reasonable in length to allow for a meaningful evaluation. Vendor / Contract Management shall log in receipt of the Unsolicited Proposal and provide written confirmation of receipt to the Offeror.

JD Unsolicited Proposals should be submitted well in advance of the Offeror's desired commencement of the proposed effort or activity in order to allow Metro sufficient time to evaluate the proposal, publicize it, and negotiate a contract if the proposal is accepted. Anticipate at least six months before any negotiation could begin.

#### **5. General Requirements**

##### **A. Prohibition of Use of Confidential Information**

If Metro's decision is to pursue a competitive procurement, Metro personnel shall not use any data, or any confidential patented, trademarked, or copyrighted part of an Unsolicited Proposal or confidential technical or financial proprietary information as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the Offeror is notified of and agrees to the intended use.

Concepts or ideas are not considered proprietary by Metro but specific implementing methodologies that are unique to the Offeror will be recognized.

V/CM staff shall place a cover sheet (attached as Exhibit 2) on the proposal, unless the Offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal.

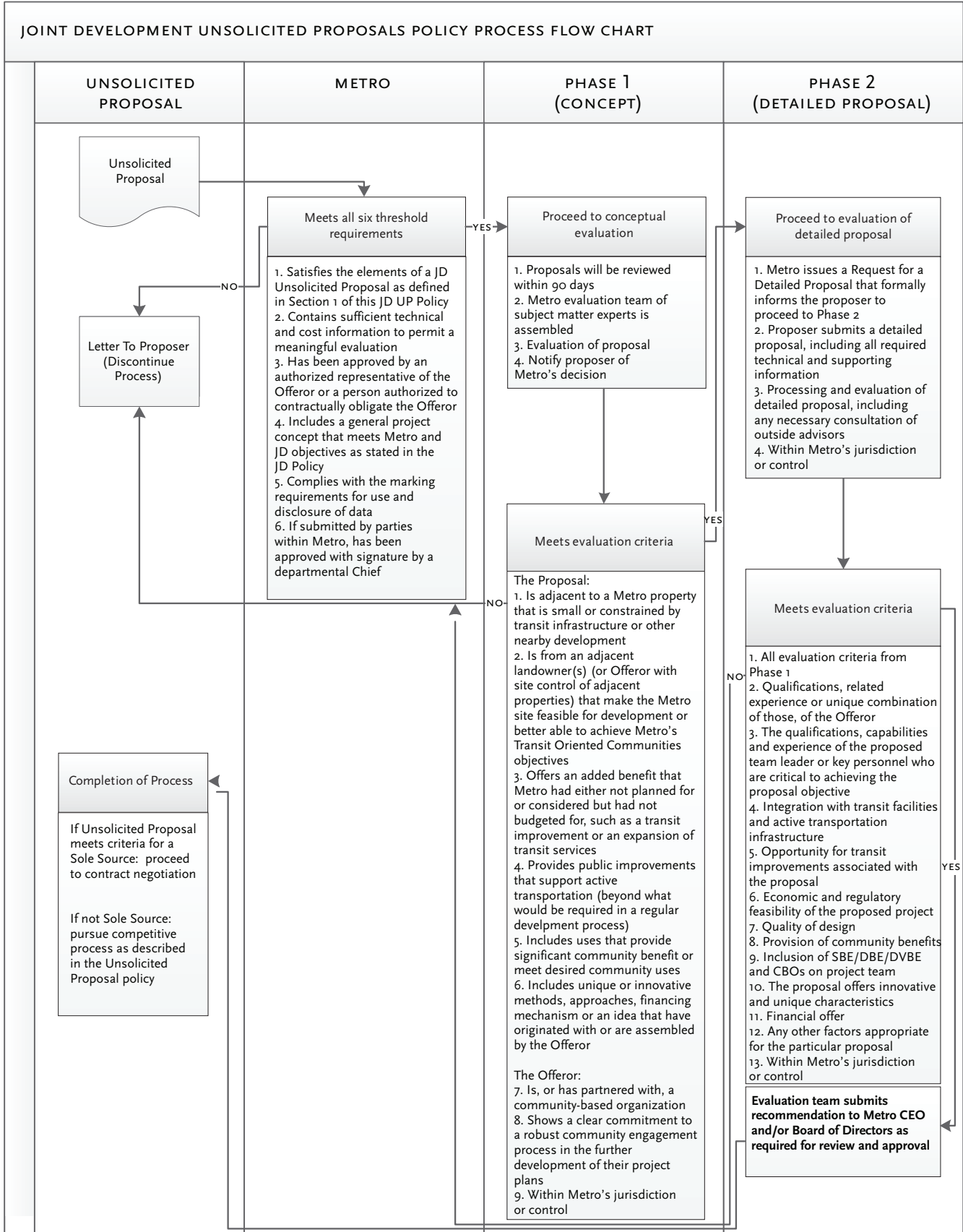
**B. Public Records Act**

Unsolicited Proposals are subject to the provisions of the California Public Records Act (California Code Government Code §6250 et seq.).

Public Contract Code Section 22164 provides that: information that is not otherwise a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) shall not be open to public inspection. Any documents provided by the Offeror to Metro marked "Trade Secret," "Confidential" or "Proprietary," or any financial records provided by the Offeror to Metro, shall be clearly marked with the Offeror name. Metro will use its best efforts to inform the Offeror of any request for any financial records or documents marked "Trade Secret," "Confidential" or "Proprietary" provided by Offeror to Metro. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

In the event of litigation concerning the disclosure of any records, Metro's sole involvement will be as a stakeholder, retaining the records until otherwise ordered by a court. The Offeror, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the records and shall indemnify and hold Metro harmless from all costs and expenses including attorney's fees in connection with any such action.

# Exhibit 1





# Exhibit 2

## JOINT DEVELOPMENT UNSOLICITED PROPOSALS SUBMITTED TO METRO PHASE ONE: CONCEPTUAL PROPOSAL FORM

Phase One of Metro’s JD Unsolicited Proposal process involves submitting this form. Submit only the information required by this form. If Metro determines that the proposal should proceed to Phase Two, Metro will issue a Request for Detailed Proposal.

### PART 1: BASIC INFORMATION

Proposer Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of organization: \_\_\_\_\_

Primary contact for the proposal: \_\_\_\_\_

Names of additional firms/partners in the proposal:

\_\_\_\_\_

Technical personnel names & contact information for each firm involved\*:

\_\_\_\_\_

\* These individuals should be responsible for answering Metro’s technical or business questions concerning the proposal or any subsequent agreement concerning the proposal.

### PART 2: TECHNICAL INFORMATION

Title of the proposal: \_\_\_\_\_

Abstract of the proposal is attached

To move forward in the Unsolicited Proposal process, the Abstract must include a brief – but complete – discussion of the following:

1. Proposal summary, including:
  - a. Vision for the project
  - b. Program for proposed project and proposed uses of Metro-owned property
2. Brief summary of the experience of the proposal team with similar/relevant projects
3. A justification for the Unsolicited Proposal Approach (see Section 2A of the JD UP Policy)
4. Manner in which the work will help support accomplishment of Metro’s TOC mission.
5. Specific Access/Property Rights the Offeror needs from Metro (i.e. Long Term Ground Lease, sale of property, etc.). Note if there are several options.

### PART 3: FINANCIAL INFORMATION

Proposed price or total estimated cost, in the form of a Sources and Uses Table: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Public funding anticipated for the project, if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of financing capacity – briefly describe current relationships with debt and equity providers that demonstrate the team’s capacity to finance the proposed project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Be concise but provide sufficient detail for Metro to meaningfully evaluate the proposal.*

**PART 4: PROCEDURAL INFORMATION**

Period of time for which the proposal is valid: \_\_\_\_\_  
\_\_\_\_\_

- Proprietary data has been submitted with this proposal and is deemed confidential by the Offeror in the event of a request submitted to Metro under the California Open Records Act. Any proprietary data must be clearly designated.
- Other government entities or private parties have received this proposal.  
Please explain: \_\_\_\_\_
- There are patents, copyrights and/or trademarks applicable to the project or services proposed.  
Please explain: \_\_\_\_\_
- There is additional information not requested in this form that would allow Metro to evaluate this proposal at this conceptual phase.  
Describe: \_\_\_\_\_  
\_\_\_\_\_

**PART 5: SIGNATURE**

Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Title: \_\_\_\_\_

*The individual who signs this form must be authorized to represent and contractually obligate the Offeror.*


# **EXHIBIT B**



# **Acquisition Policy and Procedure Manual**

## **Acquisition Procedures ACQ-2**

**Issued July 16, 2010**

**Note - This manual contains hyperlinks in grey shaded text. When you hover over the item a small hand (  ) will appear, and if you click-on the item you can automatically move to different parts of the manual.**

<b>Chapter 1</b>	<b>MTA Procurement Policy .....</b>	<b>1-1</b>
1.0	Purpose And Scope.....	1-1
<b>Chapter 2</b>	<b>Procurement Integrity and Control.....</b>	<b>2-1</b>
2.0	Media Procurement Policy.....	2-1
2.1	Standards Of Conduct.....	2-1
2.2	Reporting Of Suspected Improper Or Unlawful Conduct .....	2-3
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**1.0 Purpose And Scope**

**Chapter 1 – MTA Procurement Policy of the Procurement Policy Manual issued March 1, 2006 and revised May 21, 2009 has been replaced in its entirety by the Acquisition Policy Statement (ACQ-1) which is under separate cover.**





**Sections 2.0, 2.1, 2.2, 2.3, 2.5, 2.6 and 2.7 of Chapter 2 of the Procurement Policy Manual issued March 1, 2006 and revised May 21, 2009 have been replaced in their entirety by the Acquisition Policy Statement (ACQ-1) which is under separate cover. The remaining sections of Chapter 2 have been renumbered but the text is unchanged.**

## **2.0 Media Procurement Policy**

- A. The purpose of this policy is to enable the timely purchase of communications media to meet MTA's needs by exempting such purchases from the standard procurement process and delegating sufficient budget authority to the CEO or the CEO's designee to execute contracts with individual media outlets as necessary.
- B. Under this policy, MTA shall facilitate media procurements by authorizing a designated Media Buyer to conduct competitive solicitations for such procurements in a manner consistent with media industry practices.
  - 1. The Media Buyer shall be either an outside professional services consultant obtained through the standard procurement process or qualified Communications staff member.
  - 2. The Media Buyer shall be responsible for obtaining and analyzing bids from media outlets, negotiating rates and "bonus" space or time, recommending the most efficient and cost-effective media choices to MTA Communications management and placing media orders on behalf of MTA with the written approval of the CEO or the CEO's designee.
- C. All subsequent required documentation for media procurements shall be maintained internally by procurement staff in a manner consistent with the spirit and intent of the Board-adopted "Procurement Policy and Procedures." However, these documentation procedures shall not impede MTA's ability to commit to media purchases in a timely fashion.
- D. Media procurements shall be initiated through the Communications Strategic Business Unit by the Chief Communications Officer or the CCO's designee. The purchase of classified advertising of procurement and recruitment notices is excepted and is not affected by this policy.
- E. To preclude the need for repetitive individual administrative Board actions, the Chief Executive Officer's delegated signature authority specifically and exclusively for media contracts covered by this policy shall be \$500,000 with \$250,000 aggregate amendment authority.
- F. The Chief Executive Officer is responsible for ensuring that this policy is converted to an action plan, budgeted for appropriately and implemented by staff.

## **2.1 Standards Of Conduct**

- A. The procurement business of the MTA shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and without preferential treatment. The Standards provide in part, that: No Director, Officer or employee shall:



1. Have a financial interest, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the MTA is a party;
  2. In connection with services performed within the scope of his/her official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him/her by the MTA;
  3. Willfully violate any provisions of this section or may, in the discretion of the Board, forfeit his/her office or employment;
  4. Make any contract or agreement made in contravention of this section.
- B. It is the policy of the MTA that all personnel shall perform their official duties in such a manner as to avoid even the appearance of a conflict of interest. No officer or employee shall:
1. Release to an individual or concern or its representatives any knowledge such person may possess or have acquired in any way concerning any proposed procurement that would give an unfair competitive advantage (See Policy Statement);
  2. Make any commitment or promise relating to the selection of a contractor or award and no representation, which could be construed as such a commitment. Personnel will not under any circumstances advise a business representative that any attempt will be made to influence another person to give preferential treatment to his/her firm in the selection of a contractor or the award of a contract;
  3. Use his or her position with the MTA to coerce, or give the appearance of coercing, another person to provide any financial benefit to persons with whom he/she has family, business or financial ties;
  4. Accept any gratuity for themselves, members of their families or others, either directly or indirectly, from any source that it engaged in or seeks business or financial ties of any sort with the MTA or has interests that may be affected by the performance or non-performance of the official duties of MTA personnel.
  5. Participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:
    - a. The employee, officer, or agent;
    - b. Any member of his or her immediate family;
    - c. His or her partner; or
    - d. An organization that employs, or is about to employ, any of the above.
  6. Participate in any actions that might result in favored treatment or the appearance thereof toward prospective contractors.
- C. In order to avoid the appearance of, or an actual, conflict of interest, members of any MTA procurement evaluation panel shall disclose any present, prior or prospective affiliation (i.e., employment, source of income, financial interest or other affiliation) of themselves or members of their families with any offeror or prospective subcontractor being considered for



selection, or any firm or individual for whom the contract may have a foreseeable financial effect. In the event such affiliation exists or existed, the member is responsible for advising the Contracting Officer. The determination of whether affiliations are disqualifying will be made on a case-by-case basis. The Contracting Officer should consult with the Ethics Department on Conflict of Interest issues. In no event will members with interests which are disqualifying under State or Federal law or regulations or under the MTA's Code of Conduct be permitted to participate (see MTA Ethics Department's website - <http://www.metro.net/about/ethics/>). All procurement business shall be conducted in accordance with this Code of Conduct.

- D. To accomplish that end and in order to avoid the necessity of having to adjourn and reschedule evaluation meetings, prior to the meetings the Contracting Officer shall inform the nominated evaluation committee members of the names of the offerors being considered for selection, the names of potential subcontractors and suppliers, if known, and the scope of work in the proposed agreement.
- E. Any violation of these standards may be cause for disciplinary action, including dismissal, if appropriate.
- F. In order to assure that contractors are put on proper notice, MTA Contracting Officers will insert in all contracts the Supplemental Condition entitled "Code of Conduct, Gratuities and Conflict of Interest".
- G. The Chief Executive Officer shall ensure that all MTA Contracting Officers and employees involved in the contract award and administration process are thoroughly familiar with the conflict of interest and other employee conduct provisions of the MTA personnel policies, and the Code of Conduct for MTA/PTSC Employees (see the MTA Ethics Department's website <http://www.metro.net/about/ethics/>).

## **2.2 Reporting Of Suspected Improper Or Unlawful Conduct**

- A. A Contracting Officer shall report to the Executive Officer, any bids which evidence a violation of the anti-trust laws. The Officer shall consult with the Office of County Counsel as soon a practical to ascertain whether a reasonable basis exists for believing that collusion has occurred among any businesses for purposes of defrauding the MTA.
- B. Practices or events that may evidence violations of anti-trust laws include the following:
  - 1. The existence of an "industry price list" or "price agreement" to which a contractor refers in formulating its offer;
  - 2. A sudden change from competitive bidding to identical bidding;
  - 3. Simultaneous price increases or follow-the-leader pricing;
  - 4. Rotation of bids or proposals, so that each competitor takes a turn in sequence as the low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;
  - 5. (Division of the market, so that certain competitors bid low only for contracts solicited by certain agencies, or for contracts in certain geographical areas or on certain products, and bid high in all other jobs;



6. Establishment by competitors of a collusive cost or price estimating system;
  7. The filing of a “joint” bid by two (2) or more competitors when at least one (1) of the competitors has sufficient technical capability and productive capacity for contract performance, unless such joint bid is for the purpose of promoting the MTA's Disadvantaged Business Enterprise Program;
  8. Incidents suggesting direct collusion among competitors, such as the appearance of identical calculations or spelling errors in two (2) or more competitive offers, or the submission by a single firm of offers for other firms; or
  9. Assertions by employees or former employees, or competitors of offerors, that an agreement to restrain trade exists.
- C. Suspected improper or unlawful conduct shall be reported to the MTA's Office of Inspector General.

### **2.3 Prohibition Against Contingent Fees**

- A. The purpose of this Section is to prevent contractors and their agents or representatives from exerting improper influence upon MTA personnel for purposes of obtaining MTA contracts.
- B. The Contracting Officer shall ensure that each solicitation contains language, approved by the Executive Officer, giving notice to prospective contractors of the prohibition against contingent fee arrangements and requiring contractor's covenant against contingent fees.
- C. A Contracting Officer shall not award any contract to a contractor that has made arrangements to pay a contingent fee or other consideration for soliciting or obtaining the contract unless the contingent fee arrangement is between contractors and bona fide employees or bona fide agencies.
- D. If the Contracting Officer has reason to believe that a prospective contractor or contractor is or has been involved in a contingent fee arrangement, the Contracting Officer shall inform the Executive Officer in writing, including any evidence or documentation of the alleged arrangement.
- E. If it is determined that a prohibited contingent fee has been paid or that a contractor has entered into an arrangement to pay a prohibited contingent fee under an existing contract, the Contracting Officer shall terminate such existing contract or take any other appropriate remedial action.
- F. If the Executive Officer determines that a prospective contractor has entered into an arrangement to pay a prohibited contingent fee, the Contracting Officer shall notify the prospective contractor that it is no longer eligible for award of the contract.

**2.4 Additional Standards Of Conduct****2.4.1 Revolving Door**

- A. MTA Contracting Officers will notify contractors that they are not to offer employment to any officer or employee of the MTA who has been involved, directly or indirectly, in any matter of financial interest to the contractor until at least one year after the officer or employee has ceased involvement in or responsibility for the matter.
- B. Appropriate contract provisions shall be included in all MTA contracts.

**2.4.2 Vendor/Contractor Contacts**

- A. It is a basic principle of the MTA Procurement system that all potential offerors be treated in a fair and evenhanded manner.
- B. GUIDELINES - To avoid misunderstandings with vendors and contractors, the following guidelines shall guide all MTA staff contacts with vendors and/or contractors:
- C. CONTACTS PRIOR TO ISSUANCE OF A SOLICITATION (IFB OR RFP):
  - 1. Informational and market research contacts with prospective contractors/ vendors are a valuable source of data to the MTA. These contacts are clearly necessary but should be guided by the exercise of good judgment. The primary pitfalls to be avoided are promises or implications of a future contract and requests for complimentary services or supplies, which may create the impression of an obligation on the part of the MTA. Some specific services or assistance from potential vendors, which should be avoided are:
    - a. Testing services;
    - b. Custom drawings;
    - c. Special investigations;
    - d. Major demonstrations;
    - e. Furnishing significant samples;
    - f. Free trips to specific employees to view products.
- D. If any of the above is required, coordination must be made with the Executive Officer, Procurement and the Office of County Counsel.
- E. Vendor's/contractors' requests for price histories or the opportunity to examine a part should be directed to the Executive Officer, Procurement, A vendor's request will usually be honored except in the circumstances stated in the Section below. Parts are not to be loaned/sold to vendors as part of this process.

**2.5 Contacts During Solicitation, Evaluation, Negotiation And Award**

- A. All contacts with contractors/vendors that relate to a procurement that is in the solicitation, evaluation, negotiation or award phase must be conducted through the Contracting Officer.
- B. All requests for procurement history of any type related to an ongoing procurement, including pricing history, will be directed to the Contracting Officer. The Contracting



Officer will refer the request(s) to Records Management for processing in accordance with para. 2.7 below.

## **2.6 Contractor Pre-Qualification**

- A. In accordance with PUC Section 130051.21, the MTA shall not enter into contracts with firms who knowingly provide false information in the questionnaire.
- B. Contractors seeking to enter into contracts with the MTA are required to complete and submit a Pre-Qualification application in accordance with Pre-Qualification policy. A completed, executed and notarized application or validation must be submitted by the date and time prescribed in the solicitation documents, but no later than the bid or proposal due date and time in order for the bid or proposals to be considered responsive to the specific solicitation. Provided that the application is complete and does not require further information from the Offeror, the MTA will consider the application's bid or proposal. Application information will be verified by reviewing public databases and records, checking references, conducting financial analysis, and utilizing other investigation methods.

### **2.6.1 Pre-Qualification Application Updates**

Pre-qualification approvals are valid for two (2) years. Once an application is on file and has not expired, updates for any conditions that may affect their previous application must be submitted by the date and time prescribed in the solicitation documents but not later than the bid or proposal due date and time using the "Validation Form". Even if there are no changes a Validation Form must be approved by the MTA by the bid or proposal date and time in accordance with the procedures in Section 2.6 above.

### **2.6.2 Pre-Qualification Denials**

- A. Pre-qualification Denials shall be given and bids or proposal should not be considered in the following instances:
  - 1. Failures to submit any portion of information requested on the questionnaire;
  - 2. Deliberate submission of false information;
  - 3. Debarment or suspension in any public contracting arena;
  - 4. Inability to provide proof of required insurance;
  - 5. Inability to substantiate required bonding capacity
  - 6. Inability to provide required licenses; or
  - 7. Any combination of substantive factors such as, but not limited to, disregard for laws and regulations, history of failure to perform in other contracts, unresolved tax liens, patterns of serious OSHA violations, etc., which, in the sole discretion of the MTA, do not meet the standards of fitness or reliability expected from contractors wishing to do business with this agency.

### **2.6.3 Pre-Qualification Appeals**

Firms who have been denied pre-qualification with the MTA have ten (10) business days, from the date of receipt of the denial notification, to file a written appeal. Evidence of



receipt is required. The MTA establishes an Executive Review Panel to review appeals. The Panel will examine the appeal and the facts surrounding the determination before making a decision on the firm's appeal. The Panel's decision is the final administrative decision of the MTA. There are no further administrative appeals.

**2.7 California Public Records Act Requests**

All requests for procurement related information shall be submitted to the Records Management Center for appropriate action in accordance with MTA procedure # Gen. 12. Records related to an ongoing Procurement cannot be disclosed until staff recommendation for award has been forwarded to all interested parties or as otherwise appropriate under the California Public Records Act and applicable state laws and Federal requirements. History of prior procurement actions, including price history, for the same or similar items are not considered records related to an ongoing Procurement and may be released as otherwise required by the Public Records Act.

**2.8 Contractor/Vendor Access To Operating Facilities**

With only a few exceptions, contractors and vendors are not allowed in the work area of any MTA operating facility. This includes contractors/vendors who are already supplying materials to the MTA, as well as those who are seeking initial orders. All such contractors/vendors should be referred to the Executive Officer.



### 3.0 Policy

- A. It is the policy of the MTA, pursuant to the provisions of Federal and State laws and regulations, and implemented by directives of the MTA Board, to promote the utilization of Disadvantaged Business Enterprises (DBE), Women's Business Enterprises (WBE) and Minority Business Enterprises (MBE) to the maximum extent feasible. MTA procurement and contracting processes will provide a level playing field, applying race neutral and race conscious measures for Disadvantaged Business Enterprises (DBE), Women's Business Enterprises (WBE), Minority Business Enterprises (MBE) and Small Business Enterprises (SBE) to compete for and participate in all aspects of MTA procurement and contracting.
- B. Specific responsibility for developing and implementing the DBE and SBE programs is delegated to the Director of the Department of Small Business Diversity and Labor Compliance, hereinafter named SBD. Procedures for establishing DBE or SBE goals will be coordinated through SBD. Responsibility for ensuring compliance to the MTA Small Business Diversity Policy is shared by all MTA employees.
- C. In furtherance of this policy, the MTA requires that all requests for proposals (RFP's) estimated over \$25,000 for construction and \$40,000 for other goods and services, be forwarded to SBD for DBE or SBE goal evaluation prior to advertisement. Notification of procurement opportunities in purchasing, concessions, real estate and other operating functions are also forwarded to SBD prior to their public release. DBE or SBE goals will be assigned to all applicable construction contracts prior to advertising. It is the responsibility of Contracting Officer (CO) to coordinate with SBD to ensure that the established goal is included in the solicitation documents along with the resource list of DBE/SBE's identified and forwarded to CO at the time of goal setting. The CO ensures that all applicable forms are included in bid/proposal packages for identification of DBE/SBE participation, description of scope of work to be performed, materials supplied, and service or broker function to be performed by each DBE/SBE listed.
- D. In instances where MTA has not established a specific goal for participation by DBE/SBE's on a contract, if the proposer subcontracts, the Proposer is still expected to create a level playing field for DBE/SBE firms to utilize the services of subcontractors or purchase goods from suppliers during the performance of the contract. Upon MTA Request, the Prime is required to submit documentation to satisfy MTA that good faith efforts were made to utilize DBE/SBE's during the life of the contract.

#### Informal Bidding Procedures – Small Purchases

- E. **MTA Contracting Officers shall document contact with at least one DBE/SBE among those solicited for quotes, bids or proposals to increase opportunities for all small businesses to compete for, and perform.**



**3.1 Responsiveness**

- A. SBD shall evaluate responsiveness to the DBE or SBE program requirements on all bids/proposals upon receipt. The Bidder/Proposer who meets the contract-specific goal or demonstrates good faith efforts shall be deemed responsive. Should SBD determine the Bidder/Proposer non-responsive to the good faith efforts requirements, SBD shall offer the successful Bidder/Proposer(s) a administrative “Reconsideration Hearing” by the Reconsideration Officer. The Bidder/Proposer shall have 48 hours to provide written response concerning the issue of whether adequate good faith efforts were demonstrated. The Reconsideration Officer will evaluate the written and/or verbal responses and issue a formal written decision on reconsideration. **All contract awards are contingent on satisfying DBE or SBE program requirements.**
- B. The Contracting Officer is responsible for ensuring that the level of participation committed in the bid/proposal, is entered in the contract as the goal of record. Copies of all contracts are forwarded to SBD for review and filing.
- C. The Department of Transportation requires inclusion of a Prompt Payment clause in all federally assisted contracts to ensure that DBE and non-DBE subcontractors are paid promptly following satisfactory completion of work and that all retention is released following prime contractor acceptance of the subcontract work.

**3.2 Contract Compliance**

- A. A copy of the Los Angeles County Metropolitan Transportation Authority, Part E, Small Business Diversity Contract Compliance Manual, outlining the program requirements undertaken to ensure a level playing field and non-discrimination is included, under separate cover, in every federal and non-federal contract with DBE/SBE participation goals. The manual is incorporated by reference and made a part of the conformed contract documents.
- B. SBD aggressively monitors compliance to the goal of record throughout the life of the contract to ensure progressive and successful achievement of the DBE/SBE participation commitment.



#### **4.0 Purpose And Scope**

- A. This Chapter provides general guidelines regarding the preparation of MTA procurement requests and specifications by the requesting office, and the selection of the proper course of procurement action by the contracting office. This Chapter also sets forth fundamental policies in preparing contract specifications and in selecting the proper procurement method and special contracting approach.
- B. Prior to initiating a procurement action, the requesting official shall determine that supplies, equipment or services are necessary for MTA functions, operations or activities and are not duplicative of other items or services acquired by the MTA. The requesting official shall, when appropriate, make an analysis of lease and purchase alternatives and any other appropriate possibility (including the availability of surplus MTA property or property from other government sources), to determine which would be the most economical and practical means of acquiring supplies or equipment. Such analysis shall be documented as part of the contract file. Each request to initiate procurement action shall be coordinated with other MTA offices as required by this Chapter.
- C. This Chapter also outlines approval requirements for procurement transactions and the method by which the procurement of materials, construction of facilities and works, supplies and services will be requested and to indicate the manner in which Purchase Requisitions (PR's) will be prepared.
- D. In carrying out the policies prescribed by this Chapter, all aspects of an effective procurement involve the need for good communications between the MTA's requesting office and the contracting office. These communications must also include an understanding of the respective roles and responsibilities of the many MTA offices involved in the procurement initiation process.

#### **4.1 Responsibilities**

- A. The MTA office having the procurement requirement (the User office) is responsible for determining "what to buy", (i.e. develop contract specifications, delivery and completion dates) subject to MTA management approvals established by the Chief Executive Officer and the Board. It is recognized that the requesting offices may be required to coordinate some procurement requirements with other MTA offices that have the need to be involved; nevertheless, a lead requesting office must always be identified when procurement actions are initiated.
- B. The assigned MTA Contracting Officer is responsible for determining "how to buy" (i.e. select the proper method of procurement and contract terms and issue the solicitation) subject to MTA management approvals established by the Chief Executive Officer and the Board.
- C. In addition to the requesting office and contracting office responsibilities that are generally described above, other MTA offices will have to be consulted during the procurement initiation process by virtue of their functional responsibilities, i.e. County Counsel, Budget, Risk Management Department, Reliability Program Management, etc.



## **4.2 Contacts With Prospective Contractors**

MTA procurement actions will be processed in an ethical and proper manner with emphasis on maximizing competition. MTA officials involved in the procurement process shall avoid any contact with prospective contractors concerning the conduct of any MTA procurement of property or services unless explicitly authorized to do so by the Contracting Officer.

## **4.3 Publicizing Contract Actions**

### **4.3.1 Pre-award**

- A. MTA Contracting Officers are encouraged to use the most cost effective means to publicize contract actions to increase competition.
- B. California PUC § 130232 for the purchase of all supplies, equipment, and materials when the expenditure exceeds forty thousand dollars (\$40,000), and for the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars (\$25,000), requires that notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 10 days before the date for the receipt of the bids. The MTA, at its discretion, may reject any and all bids and re-advertise.
- C. California PCC §20217 for the purchase of 1) computers, telecommunications equipment, fare collection equipment, radio and microwave equipment, and other related electronic equipment and apparatus used in transit operations; (2) specialized rail transit equipment, including, but not limited to, railcars; (3) buses; and (4) passenger ferries requires a notice of the request for proposals shall be published at least once in a newspaper of general circulation, which shall be made at least 10 days before the date for receipt of the proposals.
- D. California PUC § 130238 for the purchase of (1) specialized rail transit equipment, including rail cars, and (2) computers, telecommunications equipment, fare collections equipment, microwave equipment, and other related electronic equipment and apparatus requires notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
- E. California PCC § 20231.5 for the purchase of computers, telecommunications equipment, fare collection equipment, microwave equipment, and other related electronic equipment and apparatus, and of rail cars also requires that notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
- F. Chapter VI, Subsection 3.c.(2)(a) of FTA Circular 4220.1F requires that invitations for bids are to be "publicly" advertised.
- G. Chapter VI, Subsection 3.d.(2)(a) of FTA Circular 4220.1F requires that requests for proposals are to be publicized.
- H. Pre-solicitation notices and conferences may be used as preliminary steps in procurements by competitive negotiations in order to accomplish any of the following:
  - 1. Develop or identify interested sources;



2. Request preliminary information based on a general description of the supplies or services involved;
  3. Explain complicated specifications and requirements to interested sources; or
  4. Aid prospective contractors in later submitting proposals without undue expenditure of effort, time, and money.
- I. If pre-solicitation notices are used, the Contracting Officer shall prepare and issue each notice to potential sources and shall publicize the notice in a newspaper of general circulation, and any trade publication if deemed appropriate.
- J. A pre-solicitation notice shall include the following:
1. A description of the information to be furnished in the response;
  2. An indication whether the notice will be followed by a conference and a formal solicitation; and
  3. A request that parties interested in the contemplated procurement respond by a specified date.
- K. In complex procurements, the pre-solicitation notice may request information pertaining to management, engineering and production capabilities.
- L. The Contracting Officer shall furnish copies of the solicitation to all those responding affirmatively to the pre-solicitation notice and to other prospective contractors upon their request.
- M. Pre-solicitation announcement notices shall be published in a manner reasonably likely to attract prospective bidders or proposers.
- N. The Contracting Officer shall release all pre-solicitation notices published in accordance with the above requirement with appropriate assistance from the user department. The Contracting Officer may place additional advertisements through other media or means when it is in the best interest of the MTA.
- O. Pre-solicitation advertising prescribed in this section is not required for sole source or emergency procurements, processed in accordance with Chapter 11 of this Manual.

**4.3.2 Post-award**

- A. The MTA shall notify members of the public of contract awards for procurements by sealed bid above the small purchase threshold via posting on the MTA's Internet site.



#### **4.4 Initiation And Approval Of Procurement Actions**

- A. The Chief Executive Officer and the Board establish MTA policy pertaining to the management review and approval of procurement actions. Specific guidelines for processing a request to initiate a procurement action, to approve the award of a contract or contract modification, to approve issuing a Change Order, or to obligate or de-obligate funds are set forth in this Manual.
- B. FTA 4220.1F Chapter I, Subsection 6.b. requires grantees to make procurement documents available for both pre-award and post-award reviews.

#### **4.5 Specifications And Purchase Descriptions**

- A. Requests for procurement actions submitted by the user department shall include clearly written specifications, purchase descriptions, and statements of work suitable for either competition or for negotiation with a sole source contractor, if justified.
- B. The MTA staff working as part of the Acquisition Team using the following guidance should select the type of solicitation requirements that best fits the needs of the procurement. The need for specifications, statements of work or statements of objectives depends on the type of requirement. Requirements should be reassessed each time they are procured to decide if the appropriate solicitation requirements are being used. Whenever possible and appropriate, a performance based statement of work or statement of objectives is preferable as it places the onus on the vendor to define the appropriate solution to the problem and can be more cost effective than other types of solicitation requirements.

##### **4.5.1 Types Of Solicitation Requirements**

- A. The following is a list of different ways to draft the solicitation requirements. The list is not intended to be all-inclusive and new and innovative approaches should be reviewed to determine if that approach provides a better solution to the MTA. As long as the approach meets the intent of the MTA Guiding Principles and is not specifically prohibited by law, regulation or Board Policy, staff can use the approach if they determine it is in MTA's best interest to do so.
  - 1. **Equipment and Supplies.** Plans, drawings, specifications or purchase descriptions for procurements should state only the actual minimum needs of the MTA and describe the supplies and services in a manner which will encourage full and open competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers. Items to be procured should be described by reference to the applicable specifications or by a description containing the necessary requirements. (See Brand Names - Section 4.5.2) The term specification, as used herein, is a clear and accurate description of the technical requirements for a material, product, or service, including the procedure by which it will be determined that the requirements have been met. Specifications for item or materials also contain preservation, packaging, packing, and marking requirements.
- B. **Design specifications.** Describes how to make an item; performance specifications, what the item must do. In view of responsibility for the end item and increased costs in producing



items of special design, performance-type specifications should be used whenever they will serve the intended purpose. Performance specifications allow manufacturers latitude in design within specified parameters of form, fit, and function.

1. **Construction Specifications.** The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings and the specifications and standards incorporated by reference, bids can be prepared on a fair and competitive basis. Materials, equipment, components or systems shall be described, where possible, by reference to documents generally known to industry. The documents include Federal, military, or nationally recognized industry, and technical society specifications and standards. The standards, which best represent no more and no less than the MTA's minimum needs shall be selected for incorporation by reference into the construction specifications.
2. **Statements of Work.** The statement of work approach is preferred for most MTA service contracts. A statement of work defines the work required of a contractor, either to develop the equipment being delivered to satisfy the prime mission of the MTA, or to complement the off-the-shelf items being delivered, or to provide services being procured without attendant hardware being delivered. The basic distinction between the specification and the statement of work is that the specification defines minimum standards for the hardware/software while the statement of work defines minimum work to be accomplished by the contractor under the contract.
3. **Performance Based Statements of Work:** Describe the requirements in terms of expected results or work outputs rather than the methods of performance of the work. To the maximum extent practicable, the work should be described in terms of what is to be required rather than how the work is to be accomplished or the number of hours to be provided. The statement of work should:
  - C. Clearly enable assessment of work performance against measurable performance standards, and
  - D. Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.
    1. **Statement of Objectives:** A statement of objectives (SOO) is an alternative to a statement of work. The SOO provides the MTA's overall objectives and what the MTA expects the contractor to provide in response to a solicitation. Offerors use the SOO as a basis for the proposed statement of work. This allows the offerors to propose various alternative solutions to meeting the MTA's needs. Effective use of competition and financial incentives using a SOO will help the MTA obtain better cost, schedule, and performance goals at contract inception.
    2. **Purchase Descriptions.** A purchase description may be used in lieu of a specification where no applicable specification exists. An adequate purchase description is an aid to competition and, in the absence of competition, a purchase description should set forth the essential physical and functional characteristics of the materials required. Purchase



descriptions of services to be procured should outline to the greatest degree practicable the specific services the contractor is expected to perform.

3. Stock Replenishment. Contract specifications and purchase descriptions for spare parts shall comply with the "Stock Replenishment procurement guidelines.

#### **4.5.2 Use Of Brand Names In Solicitation Requirements**

- A. FTA 4220.1F Chapter IV, Subsection 2.a.(4)(f) does not allow the use of brand name products in a solicitation without listing its salient characteristics and not allowing "an equal" product to be offered.
- B. Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby preclude consideration of a product manufactured by another firm, unless it is determined that the particular feature is essential to the MTA requirements, and that similar products of other companies lacking the particular features would not meet the minimum requirements for the item. Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal".
- C. The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the MTA in essentially the same manner as those referenced.
- D. "Brand name or equal" purchase descriptions must set forth those salient physical, functional, or other characteristics of the referenced products, which are essential to the needs of the MTA. When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor. The Contracting Officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on requests for review by bidders at the offices of the MTA.

#### **4.5.3 Organizational Conflict Of Interest:**

An unfair competitive advantage could result if a contractor were allowed to submit a bid or proposal for work described in a specification or statement of work that the contractor developed. For the purpose of eliminating a potential unfair competitive advantage, and in compliance with FTA 4220.1F Chapter VI, Subsection, 2.a.(4)(h) and appropriate state laws, a contractor that develops or assists to develop specifications, requirements, statements of work, invitation for bids, and/or request for proposals for an MTA procurement shall be excluded from competing for the resultant procurement.



#### 4.6 Advance Procurement Planning

- A. MTA management shall, immediately after approval of fiscal year budgets, identify all major procurement actions and work with the Executive Officer, Procurement, in planning each individual action allowing adequate lead time to assure compliance with procurement policies and procedures.
- B. Program Managers for the offices initiating procurement requirements will start the procurement planning process each fiscal year by meeting with Procurement staff to develop draft planning documents no later than June of the prior fiscal year.
- C. The planning documents initiated by program managers, will be based upon the best available information, and will include:
  - 1. Office Summary Procurement Plan - summarizing all known procurement actions for the fiscal year including new contract awards, exercise of options and major contract modification actions. This allows for overall workload planning for both the requirements and the procurement office.
  - 2. Individual Procurement Action Plan - prepared for each major action estimated to be in excess of \$50,000 including a projection of major procurement milestones based upon the type and complexity of procurement action identified.
- D. Planning documents will be updated periodically during the fiscal year and at least one additional planning meeting will be conducted annually. Additional planning meetings will be conducted as needed.
- E. User Departments must do procurement planning for new and renewable procurements twelve to eighteen months ahead of anticipated needs. Procurements for which a contract will have to be written by the staff of Procurement (essentially any procurement that involves more than a straight-forward purchase) take a substantial amount of time to consummate due to lengthy preparation, review, evaluation and execution processes. Any procurement over CEO delegated authority (See **Error! Reference source not found.** in Chapter 2), whether a contract or purchase order, requires a minimum of four to five weeks after the bid opening to award due to the time involved in obtaining Board approvals. Procurements of any value may take an extended amount of time to award when low bidders need to be qualified, extensive lead-time for manufacturing of item(s), etc. PR's should be submitted via the FIS system, no less than four months and preferably six months before the desired contract or purchase order award date.
- F. Prior to initiation of the Staff Summary Sheets (Procurement Request) by the Program Managers, Procurement will assign contract administrators to work with assigned contact persons in the Program Managers' office.
- G. During the planning process, special attention should be given to scheduling and identifying known recurring requirements for equipment and service procurements. This should include procurement history profiles and the DBE performance records to assist in properly planning and processing follow-on contracts.





- H. The process described above shall not preclude a prompt response to valid emergency and priority procurement actions.
- I. Routine stock replenishment procurement actions generated through the MTA's Materials Management System will not be included in the advance procurement planning process described in this Section.

#### **4.7 Purchase Requisition (PR) Requirements**

- A. Procurement actions require a properly, fully funded, executed formal purchase requisition (PR) delivered to Procurement which will assign it to the appropriate procurement staff for processing. Procurements that are intended for inventory (stock) replenishment and additional work orders for public works contracts do not require purchase requisitions.
- B. In certain circumstances a procurement will need to be started prior to the formal approval of budget for the procurement to meet MTA critical needs. In these circumstances, the project manager will request the Executive Officer, Procurement or delegate to begin the procurement process prior to formal budget approval. The request will describe the circumstances that justify that the procurement be started without an approved requisition.

#### **4.8 Approval Of Formal Purchase Requisition**

- A. Properly executed PR's are required throughout the MTA to initiate procurement action for materials, construction of facilities and works, supplies, equipment and/or services. The User Department shall complete the PR using the standard form and providing all information requested thereon. (Separate FIS procedures govern approval of PR's)
- B. All PR's must contain information concerning the intended end use of all items being requisitioned. Detailed technical specifications (if applicable), purchase description or scope of work (as applicable) reliability and warranty requirements, when applicable, and cost estimates must accompany PR's submitted to Procurement. Any requirement that precludes small business participation must include a justification and be submitted with the PR.

#### **4.9 User Responsibilities**

The individual in the User Department initiating the PR is responsible for the accuracy and adequacy of information supporting the PR. PR's should be submitted early enough to have a purchase order or contract prepared, reviewed, and issued in time for the material or services to be obtained when required. PR's may be returned to the User if the necessary documentation is missing or incorrect, (e.g., inadequate technical specifications, no SSJ or, no justifications (when required), etc. Users should keep copies of all PR's and a log of actions in order to follow-up on the status of their requests.

#### **4.10 User Approval Requirements**

The User Department shall complete the PR in accordance with the standard forms, providing all information requested thereon.

#### **4.11 Additional Approval Requirements**

- A. Any User Department requesting the procurement of chemicals or safety equipment, e.g., solvents, oils, cleaners, epoxies, or welding rods, must submit the PR to the Risk



Management Department for review and comment prior to sending the request to Procurement. User Departments requesting reproduction equipment, furniture, testing or computer equipment, software or services (which will require ITS participation with funding, maintenance, or any other participation) must have General Services or ITS Departments approval, as appropriate.

- B. All capital-funded procurements, including FTA-funded procurements, must be approved by the OMB prior to submission to Procurement. To preclude incurring ineligible costs, bids or proposals will not be solicited prior to grant approval.

#### **4.12 Preparation Guidelines (FIS)**

- A. All PR's must be sent by the User Department to Procurement via the Financial Information System (FIS).
- B. PR's will be entered, reviewed and approved on the FIS. This procedure will improve efficiency and processing of PR's, allowing the completion, submission for approval and monitoring of the PR status.
- C. The origination of a PR is based on a specific need for materials or services for a project or stock replenishment. Each PR must identify the specific project and task line item for which the procurement is to be used. Therefore, the following information must be included on the Enter Requisition form:
  - 1. Item(s) and quantity being ordered (a description of the item is adequate)
  - 2. Project and task associated with the PR
  - 3. Expenditure type and organization
  - 4. Item category, i.e., Budget Class and Budget Subclass
- D. Each of these items, except the Item Description, can be selected on-line from Quick Pick lists in the FIS.
- E. Employees requiring material or services will complete the MTA Requisition Work Sheet and submit it to the designated preparer for their cost center. Employees who have access to the View Requisition form on FIS will be able to view all of the information for their cost center on-line in the FIS System.
- F. In addition to the material entered into the FIS System, a Requisition Transmittal Sheet will accompany additional documents, when applicable, and transmitted to Procurement via diskette.
- G. Examples of additional documents, which should be sent electronically, are:
  - 1. Scope of Work
  - 2. Justification for sole source
  - 3. DBE Goal Analysis
  - 4. In-house cost estimate



#### 5. Drawings

H. As a preparer, it is important to remember that complete information is to be provided on the on-line requisition in order to assure efficient processing of the requirement(s). If the PR does not contain all of the information needed by Procurement, within 72 hours of receipt of the requisition, it may be returned to the originator on-line and, if returned, will need to be re-submitted through the Approval process as a new requirement. Procurement should work with the User Department as a team to assist the User Department in developing adequate purchase requisitions packages.

#### **4.13 Changes To Purchase Requisitions**

If a requisition is incomplete, the preparer may include the necessary information. If the requisition is in process, the approver can modify the requisition or choose to reject the requisition and return it to the preparer. If the requisition is rejected, the preparer may make the required changes and re-submit the requisition for approval.

#### **4.14 View Of Requisitions**

All requisitions may be viewed on-line within the FIS System to determine the status of the requisition (i.e., approved, rejected, or a purchase order has been created).

#### **4.15 Purchase Orders**

A. Procurement staff will determine the type of purchase document to be used to acquire requisitioned materials and services. One of the following types will be used:

1. Standard Purchase Order characteristics - Fixed Price, Fixed Quantity, Single Delivery date;
2. Planned Purchase Order characteristics - a combination of a standard purchase order and a blanket purchase agreement. Releases to be issued against the planned purchase order to place actual delivery orders;
3. Blanket or Contract Agreement characteristics - Estimated Quantity, Various Prices, Various number and descriptions of items, various delivery schedules.
4. All purchase orders and contracts shall utilize the standardized numbering system as determined by the Executive Officer, Procurement.

#### **4.16 Priority Requirements**

Priority Requirements are those which need expeditious service due to a work stoppage, increased or abnormal parts usage, an erroneous inventory count, a need for new inventory items, new maintenance procedures, campaigns, retrofit and material specification changes. A PR should be provided to Procurement as soon as the specific priority condition is discovered indicating the reason for the priority.

#### **4.17 Authority To Conduct Competitive Negotiations**

California law and Federal regulations recognize competitive negotiations as an acceptable alternative to formal advertising (sealed bidding) in certain, defined circumstances. The MTA's



authorization to negotiate contracts either competitively or, particularly, non-competitively is governed by Chapter 7, Chapter 8 and Chapter 11 respectively.

**4.18 Procurement Request Procedure Requirements**

**4.18.1 Architectural Services**

User Departments will prepare a "Request for Consultant Services", with a copy to the Equal Opportunity Programs Department, which includes all pertinent details, a project summary and scope of work. The Equal Opportunity Office will forward required language and goals to Procurement, with a copy to the User Department, as appropriate.

**4.18.2 Non-Competitive Consultant Contracts**

Non-competitive consultant contract requisitions, regardless of value, must have evidence that the action is a line item in an approved budget. The requisition must be accompanied by a scope of work, cost estimate, name and address of the desired consultant, and any other information relevant to the negotiation of the contract. Resultant contracts will be awarded in accordance with the procedures contained in Chapter 11.

**4.18.3 Work Directive Or Task Order**

Work Directive or task order requisitions will be developed in accordance with the requirements in Section 5.15 of this Manual.

**4.18.4 Modification Or Additional Work Order**

Modifications or additional work order requisitions will be developed in accordance with the procedures in Chapter 14, "Contract Management and Administration".

**4.19 Delivery And Performance**

- A. The time of delivery or performance is an essential contract element and shall be clearly stated in each solicitation. A Contracting Officer, with advice from technical manager, shall ensure that a delivery or performance schedule is realistic and meets the requirements of the procurement. Except when clearly unnecessary, a solicitation shall inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.
- B. When establishing a contract delivery or performance schedule for supplies or services, the Contracting Officer shall consider applicable factors, including the following:
  - 1. Urgency of need;
  - 2. Production of item;
  - 3. Market conditions;
  - 4. Transportation time;
  - 5. Industry practices;
  - 6. Capabilities of certified minority businesses;
  - 7. Time for obtaining and evaluating bids or offers and awarding contracts;



8. Time for contractors to comply with any condition precedent to contract performance; and
  - a. Time for the MTA to perform its obligations under contract, such as furnishing MTA property to the contractor.
- C. When scheduling the time for completion of a construction contract, the Contracting Officer shall consider applicable factors, such as the following:
  1. The nature and complexity of the project;
  2. The construction season involved;
  3. The required completion date;
  4. The availability of materials and equipment;
  5. The capacity of the contractor to perform; and
  6. The use of multiple completion dates.
- D. In any contract, different completion dates may be established for separable items of work, when multiple completion dates are used, the Contracting Officer shall evaluate requests for extension of time with respect to each item, and shall modify the affected completion dates when appropriate.
- E. The Contracting Officer may establish contract delivery or performance schedules on the basis of any of the following:
  1. A specific calendar date or dates;
  2. A specific period or periods from the date of the contract;
  3. A specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract; or
  4. In contracts containing indefinite delivery provisions (such as term contracts or federal supply schedules), a specific time for delivery after receipt by the contractor of each individual order issued under the contract.
- F. When establishing dates for performance or delivery, the Contracting Officer shall take into account factors pertaining to the ability of the contractor to actually begin performance, such as time for receipt of notice by the contractor of the contract award or acceptance.
- G. The contracting office shall mail or otherwise furnish to the contractor the executed contract, notice of award, or notice of acceptance of proposal not later than the effective date of the contract, or as soon thereafter as possible.

#### **4.20 Authorized Methods Of Procurement**

- A. All MTA procurement actions above the small purchase threshold shall employ either a formally advertised or negotiated method of procurement. Procurement by competitive sealed bid, the formal advertised method, is required for contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds



\$25,000 and contracts for the purchase of, supplies, equipment, and materials when the expenditure required exceeds \$40,000 and contracts for purchases of miscellaneous and professional services when the expenditure exceeds the small purchases threshold unless the negotiated method of procurement is explicitly authorized by this Manual or by a written finding). Negotiated procurement includes both competitive and noncompetitive situations. In both cases a finding is required to document the decisions to negotiate except as described below.

- B. The competitive method of procurement for the following types of procurement actions is authorized without the necessity of a written finding:
  - 1. Purchases for construction under \$25,000 and for supplies, equipment, and materials under \$40,000, which are placed in accordance with Small Purchase procedures;
  - 2. Purchases to be made from or the contract is to be made with the Federal or any State government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;
  - 3. Contracts for services, which are to be negotiated;
  - 4. Contract modifications as authorized and justified as within the contract scope of work and pursuant to authorized contract provisions.
- C. The negotiated method of procurement for the following types of procurement actions are authorized subject to a finding approved one level above the Contracting Officer:
  - 1. The public exigency requires the immediate delivery of the articles. In order for this authority to be used, the need must be compelling and of unusual urgency, as when the MTA would be seriously injured, financially, or otherwise, if the property or services to be purchased or contracted for were not furnished by a certain time, and when they would not be processed by that time by means of formal advertising;
  - 2. Only one source of supply is available or as a result of a single bid in response to an IFB, it is necessary to negotiate in order to determine price reasonableness;
  - 3. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.
- D. In the event that FTA pre-award review is required in accordance with Circular 4220.1F, the finding required by this section shall be forwarded for FTA approval following the required MTA approval of the procurement action.
- E. The Contracting Officer shall assure, that as part of the procurement initiation process, the appropriate authorized method of procurement is identified and approved, if required, pursuant to the above sections of this Chapter.

**4.21 Stock Replenishment Procurement Guidelines**

- A. Notwithstanding the nominal federal funding of the activity, the MTA's Stock Replenishment Program is required to include federal competitive procurement procedures of FTA Circular 4220.1F. This program shall include requirements for a comprehensive spare parts data package in each new systems production contract for rolling stock or other major systems. The MTA shall also employ a multi-sourcing approach following initial spares provisioning process when it is later determined that multi-sourcing would be cost effective and would stimulate competition.
- B. Formally advertised bids may be required when it is economically feasible to reorder larger quantities or when the accumulated values of the items required exceeds the current small purchase threshold. The MTA may also utilize competitively obtained Blanket Purchase Agreements or requirements type contracts for large groups of items from the same or different manufacturers in order to assure timely deliveries and to maximize economies of scale with consolidated requirements techniques.
- C. Federal procurement procedures prohibiting the restriction of competition have been included in this Manual and are applicable to all spare parts purchases. "Brand name or equal" spare parts purchases require salient physical and/or functional characteristics of the brand name product to be included in the solicitation unless the Contracting Officer determines in writing that either competition will not be restricted by the brand name or equal statement alone or that sole-source procurement can be justified. For purposes of administrative efficiency, Class Determinations and Findings covering a specified time period may be used for certain spare parts or groups of parts where only one manufacturer is available and that specific manufacturer's part is critical to system safety and performance.
- D. Examples of circumstances whereby salient characteristics are not necessary in order to assure adequate competition for items identified as brand name or equal would include:
  - 1. Use of a commercial catalog description, which has proven to be adequate in obtaining competitive bids.
  - 2. Particular features of the specific brand name which are essential to MTA requirements and for which there are no other known similar products. In some of these circumstances competitive bids will be obtained from the manufacturer and/or distributors.
  - 3. Identification of the brand name item that is common within the industry and the MTA has accepted common items from other manufacturers and their dealers; therefore, attempts to provide salient characteristics would serve no useful purpose.
  - 4. Purchases under \$40,000 where formally advertised solicitation procedures are not required.
- E. The MTA will constantly monitor the demand for spare parts and if determined to be economically feasible will attempt to develop other manufacturing sources. The MTA will also attempt to preclude the limitation of manufacturing sources for spare parts by obtaining comprehensive data packages including manufacturing source(s), specifications, use and cost



- F. MTA user departments will maintain spare parts data which may include specifications, drawings, manufacturers' descriptive materials, commercial catalog references, or salient characteristics suitable for competitive procurement if only brand names are utilized. This database will also be periodically supplemented by requiring vendors to also deliver specification information to the user department as part of the stock replenishment purchase. The Office of Procurement and Distribution in coordination with the operating departments will jointly identify hi-usage single source items and will pursue multi-sourcing opportunities including the use of qualified parts testing if appropriate. It should also be recognized that there will be circumstances where it is not economical to expend additional resources to attempt to promote competition for limited market low-use, low-dollar spare parts.
- G. MTA Contracting Officers will include a spare parts data clause in all contracts that require the initial provisioning of spare parts for the MTA's inventory system. This clause will require a comprehensive, separately priced data package as described in this Section.

## **4.22 Cost Estimates**

### **4.22.1 General**

The MTA shall prepare independent cost estimates prior to receiving bids and proposals.

### **4.22.2 Section Definitions**

Independent Cost Estimate is a determination of price reasonableness prepared prior to and independent of any input from the offeror. The method and means of establishing the independent estimate may vary based on the circumstances and can range from checking historical records or published price guides, to a detailed estimate in the same level of detail that is required for contractors submitting proposals. In its most reliable form, the estimate is a cost build up by qualified staff using similar pricing techniques and cost elements (e.g., direct labor hours, rates, materials, burden, home office expense, profit, etc.) as used by contractors developing their own internal cost estimates for bids and proposals.

### **4.22.3 Independent Estimates**

- A. The independent estimate provides the Contracting Officer with essential input during the solicitation process. Independent cost estimates will be used to establish a competitive range and to supplement the required evaluation and/or negotiation process. After contract award, independent cost estimates may provide essential input with respect to changes and claims.
  - 1. Foundation - The basis for the independent cost estimate is embedded in the fundamental requirement in MTA procurement and FTA 4220.1F Chapter VI, Subsection 6, but as a starting point, grantees must make independent estimates before receiving bids or proposals”.
  - 2. Uses and Benefits - The establishment of an independent cost estimate that is developed independently from a prospective offeror:
    - a. Provides a determination of value (i.e., do benefits warrant the cost)





- b. Supports procurement planning
  - c. Establishes the competitive range
  - d. Provides a basis of a price analysis, which may eliminate the need for a more burdensome cost analysis
  - e. Provides a basis for development of a pre-negotiation objective
  - f. Supports the MTA negotiation position with contractor
3. Method and Degree of Independent Cost Estimates. The Contracting Officer has discretion to determine the method and degree of the independent cost estimate. The cost required to research and prepare the estimate should not outweigh the potential benefits of the estimate. An independent estimate can be obtained from different sources including the following:
- a. Published competitive prices
  - b. Results of competitive procurements
  - c. Estimates by in-house estimators
  - d. Outside estimators

#### **4.22.4 Restrictions And Limitations**

- A. The independent cost estimate is prepared prior to review of an offeror's cost or price proposal. Individuals preparing independent estimates will not have access to pending offers. The independence of the estimate from any of the offers is essential.
1. Estimates Prepared After Receipt of Offers. Any price analysis or data collection performed after receipt of the offers will not be as useful as data collected before the receipt of the offers. An independent cost estimate prepared before the receipt of the offers cannot raise the question of whether the particular data and analysis was consciously or unconsciously intended to justify the bid received, or conversely, to justify a reduction in price.
  2. Complex Projects. In some cases, the preparation of independent cost estimates may be difficult or may lie outside the expertise of MTA personnel. Outside firms may be used if the cost can be justified. Discussions with other agencies are also a potential source of information. Other grantees that have undertaken similar projects are a valuable source of cost estimating information.
  3. Equipment. Independent cost estimates for equipment may be prepared from published price lists or from past competitive procurements updated with inflation factors. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.
  4. Services. Professional services that MTA procures range considerably in types and price. If it is determined that in-house personnel are not proficient enough to prepare the estimate, the Contracting Officer may obtain a professional cost estimate from a firm not interested in the final procurement.



**4.23 Source Selection Plan**

- A. For all negotiated procurements a source selection plan (SSP) shall be prepared which should address the following:
  - 1. MTA requirements
  - 2. Acquisition background
  - 3. Prospective sources for those services
  - 4. Competition
  - 5. Procurement methods
  - 6. Type and form of contract
  - 7. Compensation basis
  - 8. Source selection procedures
  - 9. Scoring matrix
  - 10. Cost estimate
  - 11. Selection committee.
- B. The Source Selection Plan shall be submitted to the Executive Officer, Procurement or designee, for approval prior to the solicitation being issued in order to maintain the competitiveness and integrity of the process. This approved plan shall be put into the contracting file for use by the evaluation panel when proposals are received.



## **5.0 Purpose And Scope**

This Chapter authorizes the use of various types of contracts by Contracting Officers to meet the procurement objective of the MTA. Contract types and conditions for use are described. Policy prohibiting the cost-plus-a-percentage-of cost type of contract is stated, and considerations for selecting the appropriate contract type and documenting the decision in the contract file (as required by FTA Circular 4220.1F) are specified.

### **5.1 General Provisions**

- A. The Contracting Officer shall use the types of contracts described in this Chapter for most types of procurement, except as otherwise provided for certain small purchases. Innovative contracting arrangements are not prohibited, but require the advance approval of the Deputy Executive Officer, Procurement or delegate.
- B. The cost-plus-a-percentage-of-cost method of contracting shall not be used, nor shall a percentage of construction costs be used in pricing A/E contacts.
- C. As detailed in FTA Circular 4220.1F Chapter VI, Subsection 2.c.(2)(b) Time and Materials Type Contracts will be used only:
  - 1. After a determination that no other type of contract is suitable; and
  - 2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.
- D. The Contracting Officer shall select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of this Chapter.
- E. In procurements by other than competitive sealed bidding, the Contracting Officer may negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

### **5.2 Selecting Contract Types**

- A. When procurement is by competitive sealed bidding, the Contracting Officer shall use a firm-price contract. The type of contract to be used shall be determined prior to the solicitation, and the solicitation shall inform bidders of the type of contract that will be used.
- B. Except when procurement is by competitive sealed bidding, the Contracting Officer should select the most effective contract type and needs to consider contract type together with the issues of price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the supplier.
- C. The Contracting Officer shall avoid continued use of a cost reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.
- D. The Contracting Officer shall include documentation in each contract file to show why the particular contract type was selected, except for purchases orders under the micro-purchase threshold.

**5.3 Fixed-Price Contracts**

- A. Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.
- B. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price shall be subject to adjustment only by operation of contract clauses, approved by the Executive Officer, providing for equitable adjustment or other revision of the contract price under stated circumstances.
- C. A firm-fixed price contract shall provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
- D. A firm-fixed-price contract shall be used for acquiring commercial products or commercial-type products, or for acquiring other supplies or services, on the basis of reasonably definite functional or detailed specifications if the Contracting Officer can establish fair and reasonable prices at the outset, including the following circumstances:
  - 1. When there is adequate price competition;
  - 2. When there are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis;
  - 3. When available cost or pricing information permits realistic estimates of the probable costs of performance; and
  - 4. When performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm-fixed-price contract.

**5.4 Fixed-Price Contracts With Price Redetermination**

- A. The Contracting Officer may use a fixed-price contract with price redetermination in procurements of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed-price for an initial period, but not for subsequent periods of contract performance as provided in the section below.
- B. The Contracting Officer shall not use a fixed-price contract with price redetermination unless all of the following apply:
  - 1. The Contracting Officer has determined that the conditions for use of a firm-fixed-price contract are not present and a fixed-price incentive would not be more appropriate;
  - 2. The contractor's accounting system is adequate for price redetermination;
  - 3. The pricing periods can be made to conform with the operation of the contractor's accounting system; and
  - 4. There is reasonable assurance that price redetermination actions will take place promptly at the specified times.
- C. When the Contracting Officer uses a fixed-price contract with price redetermination, the initial period shall be the longest period for which it is possible to negotiate a fair and



reasonable firm-fixed-price. Each subsequent pricing period shall be at least twelve (12) months.

- D. A fixed-price contract with price redetermination may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. The ceiling price shall provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of provisions for an equitable adjustment or other revision of the contract price under stated circumstances.
- E. When a fixed-price contract with price redetermination is used, the Contracting Officer shall include an appropriate clause approved by the Executive Officer.

### **5.5 Fixed-Price Contracts With Economic Price Adjustments (Escalation/De-Escalation)**

- A. The Contracting Officer shall not use a fixed-price contract with economic price adjustment unless the Contracting Officer determines that it is necessary to protect the contractor and the MTA against significant fluctuations in labor or material costs, or to provide for the contract price adjustment in the event of changes in the contractor's established prices.
- B. A fixed-price contract with economic price adjustment shall provide for upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.
- C. An economic price adjustment may be one (1) of the following general types:
  - 1. Adjustment based on increases or decreases from an agreed upon level in published or otherwise established prices of specific items or the contract end items, provided that items are standard or semi-standard supplies that have an established catalog or market price, or in the case of semi-standard supplies, can be reasonably related to prices of nearly equivalent standard supplies that have an established catalog or market price;
  - 2. Adjustment based on increases or decreases in specified costs of labor or materials that the contractor actually experiences during contract performance; or
  - 3. Adjustment based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.
- D. For use of economic price adjustment in procurements by competitive sealed bids, the Contracting Officer shall follow the procedures set forth in Chapter 7, Procurements by Sealed Bidding.
- E. The Contracting Officer may use a fixed-price contract with economic price adjustment when the following factors are applicable:
  - 1. There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and
  - 2. Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract.



- F. Price adjustments based on established catalog prices shall be restricted to industry-wide contingencies. Industry-wide contingencies shall be those affecting a particular industry as a whole, and shall not depend upon circumstances within the contractor's control.
- G. Price adjustments based on labor and material costs shall be limited to contingencies beyond the contractor's control.
- H. When establishing the base level from which adjustments will be made, the Contracting Officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor, under the economic price adjustment clause approved by the Executive Officer.
- I. In contracts that do not require submission of cost or pricing data, the Contracting Officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

### **5.6 Cost Reimbursement Contracts**

- A. The Contracting Officer shall use a cost-reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.
- B. The Contracting Officer may use cost-reimbursement contracts only when the following circumstances apply:
  - 1. The contractor's accounting system is adequate for determining costs applicable to the contract;
  - 2. Appropriate MTA surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
  - 3. The Contracting Officer determines, based upon discussions with the Project Manager that the lack of precision of the statement of work or the difficulty of accurately estimating the costs make the use of a fixed-price contract impractical.
- C. Each cost-reimbursement contract shall contain the following:
  - 1. A clause, approved by the Executive Officer, Procurement, indicating that only those costs determined to be reasonable and allocable in accordance with Chapter 15 - Cost And Price Analysis, will be reimbursable; and
  - 2. A clause, approved by the Executive Officer, Procurement, establishing a stated limitation of cost.
- D. The Contracting Officer may use a cost-sharing contract when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.
- E. The Contracting Officer may use a cost-plus-incentive-fee contract or cost-plus-award-fee contract in accordance with the provisions in Section 5.7 below on Incentive Contracts.
- F. The Contracting Officer may use a cost-plus-fixed-fee contract when contracting for efforts that might otherwise present too great a risk to the contractor, such as when the contract is for a study and the level of effort is unknown.



- G. A cost-plus-fixed-fee contract may be in either a completion form or term form (see Section 5.15 below, Indefinite Delivery Contracts). When using the completion form the Contracting Officer shall describe the scope of work by stating a definite goal or target and specifying an end product. When using the term form, the Contracting Officer shall describe the scope of work in general terms and obligate the contractor to devote a specified level of effort for a stated time period.
- H. When using a cost-plus-fixed-fee contract, the completion form shall be preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work. The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

### **5.7 Incentive Contracts**

- A. The Contracting Officer may use an incentive contract when a firm-fixed-price contract is not appropriate and the required supplies or services can be procured at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.
- B. The Contracting Officer may use an incentive contract when it is necessary to establish reasonable and attainable targets that are clearly understandable by the contractor, and to provide appropriate incentive arrangements designed to motivate contractor efforts and discourage contractor inefficiency and waste.
- C. When predetermined formula-type incentives, on technical performance or delivery are included, increases in profit or fee shall be provided only for achievement that surpasses the targets, and decreases shall be provided for to the extent that targets are not met.
- D. The Contracting Officer shall apply incentive increases or decreases to performance targets rather than minimum performance requirements.
- E. Incentive contracts may be fixed-price incentive contracts or cost-reimbursement incentive contracts.
- F. Cost-reimbursement incentive contracts shall be subject to the provisions of the Sections 5.6, and 5.10 on Cost-Reimbursement Contracts.

### **5.8 Types Of Incentives**

- A. Incentive contracts shall include cost incentives that take the form of a profit or fee adjustment formula. No incentive contract shall provide for other incentives without also providing for a cost incentive.
- B. Except for cost-plus-award-fee contracts, incentive contracts shall include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides for the following:
  - 1. Actual cost that meets the target will result in the target profit or fee;
  - 2. Actual cost that exceeds the target will result in downward adjustment of the target profit or fee; and



3. Actual cost that is below the target will result in upward adjustment of the target profit or fee.
- C. Technical performance incentives may be considered in connection with specific product characteristics or other specific elements of the contractor's performance.
- D. Technical performance incentives shall be designed to tailor profit or fee to results achieved by the contractor, compared with specified target goals. The contract shall be specific in establishing performance test criteria (such as testing conditions, instrumentation precision, and data interpretation), in order to determine the degree of attainment of performance targets.
- E. The Contracting Officer may consider delivery incentives when meeting a required delivery schedule as a significant program objective.
- F. The Contracting Officer shall specify, in incentive arrangements, the application of the reward-penalty structure in the event of caused delays or other delays beyond the control and without fault or negligence of the contractor or a subcontractor.
- G. Such incentives should only cover levels of increased performance that are desirable to the MTA and levels of decreased performance that are acceptable to the MTA. The amount of the incentive used must reflect a value judgment based on an evaluation of the tradeoff between these incentives and any cost incentives.

## **5.9 Fixed-Price Incentive Contracts**

- A. A fixed-price incentive contract may be used when the following factors apply:
  1. A firm-fixed-price contract is not suitable;
  2. The nature of the supplies or services being procured and other circumstances of the procurement are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance;
  3. If the contract also includes incentives on technical performance or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work;
  4. The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and
  5. Adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available at the time of initial contract negotiations.
- B. A fixed-price incentive contract shall be used only when the Contracting Officer determines that this type of contract represents a fair allocation of risk or that it is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.
- C. A fixed-price incentive contract with a firm target shall specify a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements shall be negotiated at the outset. The formula shall have the following results:





1. When the final cost is less than the target cost, application of the formula will result in a final profit greater than the target profit;
  2. When the final cost is more than the target cost, application of the formula will result in a final profit less than the target profit; and
  3. If the final negotiated cost exceeds the price ceiling, the contractor will absorb the difference as a loss.
- D. In a fixed-price incentive contract with a firm target, the price ceiling shall be the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.
- E. When the contractor completes performance, the Contracting Officer and the contractor shall negotiate the final cost, and establish the final price by applying the formula.

### **5.10 Cost-Plus-Award-Fee Contracts**

- A. A cost-plus-award-fee contract may be used when the following factors apply:
1. The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;
  2. The likelihood of meeting the procurement objective will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the MTA with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
  3. Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.
- B. A cost-plus-award-fee contract shall provide for a fee consisting of a base amount fixed at inception of the contract and an award amount that the contractor may earn in whole or in part during performance. Each contract shall state a maximum award amount that may be paid under the contract.
- C. The amount of the award fee to be paid shall be determined by the Contracting Officer's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract.
- D. A cost-plus-award-fee contract shall provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the area in which improvement is expected.

### **5.11 Time-And-Materials Contract**

- A. A time-and-materials contract may be used only after the Contracting Officer determines, in writing, that no other type of contract is suitable.
- B. A time-and-materials contract may be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.



- C. A time-and-materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.
- D. The contract administrator shall ensure that there is adequate surveillance of contractor performance when a time-and-materials type contract is used.
- E. When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than cost if the following factors apply:
  - 1. The total estimated contract price does not exceed fifty thousand dollars (\$50,000), or the estimated price of material charged does not exceed twenty percent (20%) of the estimated contract price;
  - 2. The material to be charged is identified in the contract;
  - 3. No element of profit on material charged is included as profit in the fixed hourly labor rates; and
  - 4. The contract provides that the price to be paid for the material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the MTA, and that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

### **5.12 Labor-Hour Contracts**

- A. When materials are not required, the Contracting Officer may use a labor-hour contract, a variation of the time-and-materials contract.
- B. The use of a labor-hour contract shall be in accordance with the provisions of the Section 5.11 above, on Time-And-Materials Contracts.

### **5.13 Letter Contracts (Letter Of Intent Contracts)**

- A. This is an interim type of contractual agreement that gives the contractor a limited Notice of Award for the manufacture of supplies or performance of services.
- B. The estimated cost of the definitive contract shall determine the type and level of review and approval required for approval of a letter contract.
- C. A letter contract shall not commit the MTA to a definitive contract in excess of the funds available at the time the letter contract is executed.
- D. A letter contract shall not be entered into without competition except as provided for under Sole Source and Emergency Procurements.
- E. A letter contract shall not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment shall be subject to the same requirements as a new letter contract.



- F. The Contracting Officer may use a letter contract when the MTA's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract shall be as complete and definitive as possible under the circumstances and shall include clauses approved and required by the Executive Officer.
- G. The maximum liability to the MTA shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the MTA's maximum liability shall not exceed fifty percent (50%) of the overall price ceiling for the term of the definitive contract.
- H. A letter contract shall contain a negotiated schedule for execution of the definitive contract, including dates for submission of the contractor's price proposal, cost or pricing data (if required), a date for start of negotiations, and a target for execution of the definitive contract.
- I. If the Contracting Officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee: 1) the Contracting Officer may terminate the letter contract or 2) if a "contract definitization" clause is included in the letter contract, the Contracting Officer may require the contractor to continue the work and the Contracting Officer may, with the approval of the Chief Executive Officer, determine a reasonable price or fee.
- J. Prior to execution of a letter contract, the Contracting Officer shall ensure that funds are encumbered for obligation in the amount of the maximum MTA liability for the term of the letter contract.

#### **5.14 Multiyear Contracts**

- A. Multiyear contracting may be used in procurement by competitive sealed bids, competitive proposals, or by sole source procurement. For the purpose of this Section, a multiyear contract is a contract funded for a specific period of time, which is less than the total time required to complete the contract, and which includes a provision that requires the contractor to continue contract performance beyond the initial specified period of time, contingent upon the MTA providing necessary funding. The term of a multiyear contract for the procurement of rolling stock and replacement parts shall not be longer than five (5) years as required by statute. ([49 United States Code Section 5326\(b\)](#)). Each multiyear contract shall provide that, at the end of each funded period, the contract shall be cancelled (pursuant to a multiyear cancellation clause approved by the Executive Officer, Procurement) if sufficient budget authority is not available to fund the contract during the period being considered. Before issuing a multiyear contract, the Contracting Officer shall make the following determination in writing that the length of the Contract is in MTA's best interest and there is a reasonable expectation of funding in the out-years.
- B. Each solicitation for a multiyear contract shall include the following:
  - 1. Requirements for sealed bid or competitive negotiations that comply with policies stated in Chapter 7, Chapter 8 and Chapter 9.



2. Criteria within the solicitation will clearly indicate how the offeror's pricing/cost will be evaluated including all years and/or option periods.

### **5.15 Indefinite Delivery Contracts And Task Orders Contracts**

- A. The Contracting Officer may use an Indefinite Delivery type of contract (either a requirements contract or an indefinite quantity contract/Task order) when the exact quantities of supplies or services are not known at the time of contract award. The contract may also specify maximum or minimum quantities that the MTA may order under each individual order and the maximum that the MTA may order during a specified period of time.
- B. There are several types of indefinite delivery contracts:
  1. Definite-quantity contracts
  2. Requirements contracts, and
  3. Indefinite quantity (IQ) contracts (commodities)
  4. Task order contracts (services).
- C. Indefinite Delivery type contract are used when the Contracting Officer anticipates recurring requirements but cannot predetermine the precise quantities for supplies or services. The Contracting Officer shall include the following in each contract and solicitation for a requirements contract:
  1. A realistic estimate of the total quantity or Dollar amount that will be ordered, based on the most current information available; and
  2. A clause, approved by the Executive Officer, stating that the estimate is not a representation to a bidder, offeror, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.
- D. If feasible, a requirements type contract shall state the maximum limit of the contractor's obligation to deliver and the MTA's obligation to order.
- E. The Contracting Officer or his or her authorized designee executing orders under a requirements type contract shall obligate funds when each individual order is issued and may order from a requirements type contract within the limits of the user department's budget authority for the items or services covered by the contract.
- F. The Contracting Officer may use an Indefinite Quantity type of contract when the Contracting Officer cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the Contracting Officer determines that it is inadvisable to commit the MTA for more than a minimum quantity.
- G. An Indefinite Quantity type contract shall require the MTA to order and the contractor to furnish at least the stated minimum quantity of supplies. The contractor shall also be required to furnish if and as ordered, any additional quantities, not to exceed a stated



maximum. The Contracting Officer shall ensure that the contract obligates the amount of budget authority needed to cover the MTA's minimum required order under the contract.

- H. The Contracting Officer shall include in the schedule of each requirements and Indefinite Quantity type of contract the names of the MTA departments authorized to issue orders under the contract. When determined appropriate by the Contracting Officer, authorization for placing facsimile orders may be included in the contract; provided, that the MTA shall establish procedures for obligating funds and confirming all such orders.
- I. Each Indefinite Delivery contract issued must include a fixed dollar ceiling that represents the target NTE cost authorizations for the work specified. Unused funds may not be transferred from one task order to another without written approval from OMB and Grants Management.
- J. In cases where multiple suppliers are awarded contracts, an indefinite delivery file will be completed and included in each task order/delivery order file. The file shall include Task Order/Delivery Order source selection and price justification to document negotiations, price reasonableness, and/or source selection decision.
- K. Each order placed under an Indefinite Delivery/Task Order contract shall contain required minimum information needed for a contract.

#### **5.16 Share In Savings Contracts**

The term 'share-in-savings contract' means a contract under which a contractor provides solutions for (i) improving the MTA's mission-related or administrative processes; or (ii) accelerating the achievement of MTA missions; and the MTA pays the contractor an amount equal to a portion of the savings derived by the MTA from (i) any improvements in mission-related or administrative processes that result from implementation of the solution; or (ii) acceleration of achievement of MTA missions.



**6.0 Policy**

**6.1 Options**

- A. Except as provided in the following Sections, a Contracting Officer may include an option in a contract when it is in the best interest of the MTA to include in the contract a unilateral right by which the MTA may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.
- B. A Contracting Officer shall not use an option (unless compelling factors favoring the use of an option exist) when, in the judgment of the Contracting Officer, the foreseeable requirements involve the following:
  - 1. Quantities large enough to permit the recovery of startup costs and the production of required supplies at a reasonable price; and
  - 2. Delivery requirements far enough into the future to permit competitive procurement, production, and delivery.
- C. A Contracting Officer shall not use an option in any of the following circumstances:
  - 1. The foreseeable requirements involve economic quantities (e.g., quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price) and delivery requirements far enough into the future to permit competitive acquisition, production, and delivery;
  - 2. If the contractor would incur undue risks, such as when the price or availability of necessary materials or labor is not reasonably foreseeable;
  - 3. If an indefinite quantity or requirements type contract would be more appropriate; provided, that a Contracting Officer may use an option to extend the term of these types of contracts;
  - 4. If market prices for the supplies or services involved are likely to change substantially; or
  - 5. The supplies or services are readily available on the open market;
  - 6. If the option represents known firm requirements for which funds are available, unless the basic quantity is a learning or testing quantity and competition for the option would be impractical after the initial contract is awarded.
- D. A Contracting Officer may include options in a contract for services if there is an anticipated need for similar services beyond the first contract period. The period within which an option may be exercised may extend beyond the date specified for completion of the services in a contract for services. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.
- E. The total of the basic and option quantities shall not exceed the requirement for five (5) years in contracts for rolling stock and replacement parts as required by statute 49 USC 5326(b). The Contracting Officer shall justify in writing the quantities or the term under option, the



notification period for exercising the option, and any limitation on the option price. The Contracting Officer shall include the justification document in the contract file.

- F. Any written findings required for a contract entered into by negotiations shall specify both the basic requirements and the increase permitted by an option.
- G. Contract provisions, approved by the Executive Officer, setting forth the cost of the option may include, but are not limited to, the following:
  - 1. A specific dollar amount;
  - 2. An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;
  - 3. In a cost-type contract, a stated fixed or maximum fee, or a fixed or maximum fee amount determinable by applying a formula contained in the basic contract;
  - 4. A specific price that is subject to an economic price adjustment provision; or
  - 5. A specific price that is subject to change as a result of changes to the prevailing labor rates provided by the U.S. Department of Labor (DOL) or the California prevailing rates, whichever is applicable.

## **6.2 Solicitation Of Contracts With Options**

- A. If a contract provides for an option, the solicitation shall include appropriate option clauses, approved by the Executive Officer. When appropriate, the solicitation shall inform offerors that the MTA may exercise the option at the time of award.
- B. Each contract shall state the period within which an option may be exercised.
- C. In order to meet the requirements of this Manual for full and open competition, and FTA 4220.1F Chapter VI, Subsection 7.b., the option must be been evaluated as part of the initial competition and be exercisable at an amount specified from the terms of the basic contract. Per FTA 4220.1F Chapter VI, Subsection 7.b. when options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement and shall comply with the Non-Competitive procurement policies in Chapter 11.

## **6.3 Exercise Of Options**

- A. Before exercising an option, the Contracting Officer shall make written findings that the exercise will be in accordance with the terms of the option and the conditions of the requirements set forth below. Such documentation shall be made part of the official contract file.
- B. A Contracting Officer shall exercise an option only after determining the following:
  - 1. That sufficient budget authority is available;
  - 2. That the requirement covered by the option fulfills an existing MTA need; and
  - 3. That the exercise of the option will be the most advantageous method of fulfilling the MTA's need, when price and other factors are considered.



- C. The Contracting Officer, after considering price and other factors, shall make the determination in the above Section on the basis of one of the following:
  - 1. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; provided, that if it is anticipated that the best price available is the option price (or that this is the more advantageous offer), the Contracting Officer shall not use this method to test the market;
  - 2. An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the most advantageous offer; or
  - 3. The short time between the award of the contract containing the option and the exercise of the option indicates that the option price is the lowest price obtainable or the most advantageous.
- D. When determining whether to exercise an option, the MTA's Contracting Officer shall take into account the need for continuity of operations and the potential cost of disrupting operations.
- E. The contract modification or other written document, which notifies the contractor of the exercise of the option, shall cite the option provision as authority for the action and should be issued within the time period specified in the contract.

#### **6.4 Unsolicited Proposals**

- A. Due to the nature of the MTA's procurement requirements, MTA officials should not encourage unsolicited proposals.
- B. The MTA will accept an unsolicited proposal for evaluation and contract award consideration if the criterion of the following section is satisfied. However, the nature of the MTA's mission is such that there will be few opportunities for award of a contract as a result of a proposal that the MTA did not solicit.
- C. A valid unsolicited proposal shall meet all of the following criteria:
  - 1. It must be innovative and unique;
  - 2. It must have been independently originated and developed by the offeror;
  - 3. It must have been prepared without MTA supervision;
  - 4. It must include sufficient detail to permit a determination that MTA support would be worthwhile; and
  - 5. It must show that the proposed work would benefit the MTA.
- D. Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:
  - 1. The offeror's name and address and type of organization such as profit, nonprofit, educational, or certified minority business;





2. The names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
3. The identity of proprietary data to be used only for evaluation purposes;
4. The signature of a person authorized to represent and contractually obligate the offeror;
5. The proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
6. The period of time for which the proposal is valid;
7. The type of contract preferred; and
8. The proposed duration of effort.

**6.5 Evaluation Of Unsolicited Proposals**

- A. When performing an evaluation of an unsolicited proposal, the following factors shall be considered, in addition to any others appropriate for the particular proposal:
  1. The unique and innovative methods, approaches, or concepts demonstrated by the proposal;
  2. The overall scientific, technical, or socio economic merits of the proposal;
  3. The potential contribution of the effort to the MTA’s specific mission;
  4. The offeror’s capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives; and
  5. The qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.
- B. The MTA shall return an unsolicited proposal to an offeror, citing reasons, when its substance meets any of the following criteria:
  1. It is available to the MTA without restriction from another source;
  2. It closely resembles a pending competitive requirement; or
  3. It does not demonstrate an innovative and unique method, approach, or concept, or if it does, another method, approach, or concept may be available to the MTA on the basis of competitive proposals.
- C. A favorable evaluation of an unsolicited proposal shall not, by itself, justify awarding a contract without full and open competition.
- D. The Contracting Officer may commence negotiations only when the following conditions are met:
  1. The unsolicited proposal has received a favorable comprehensive evaluation;
  2. The unsolicited proposal is not disqualified under the criteria of the above section on returning the proposal to the offeror;



3. The MTA office sponsoring the contract supports the recommendations with facts and circumstances that preclude competition and has the necessary funds;
4. The MTA sponsor has obtained written approval from the appropriate approval level based on delegated authority; and
5. If required, the Contracting Officer has publicized the award in accordance with the section on Publicizing Contract Actions in Section 4.3, Procurement Planning and Methods, unless publication would improperly disclose the originality of thought or innovativeness or would disclose proprietary information.

## **6.6 Procurement And Qualification Of New Chemical Commodities**

- A. It is the policy of the MTA that the procurement of New Chemical Commodities, including Cleaners, Paints, Solvents, Lubricants, Adhesives and Graffiti Removers receive the review and concurrence of User Department/Project Managers, Risk Management and of Inventory Management Division, as appropriate, for occupational and environmental safety requirements, and that these commodities be properly described with composition, use and labeling specifications, as appropriate, for the purposes of Commodity Classification and Purchasing.
- B. MTA shall have a committee made up of representatives of all User Department/Project Managers dedicated to discussing, sharing information and establishing procedures for the procurement and qualification of New Chemical Commodities. This committee shall jointly review all newly qualified products to insure that the product has an established specification or explicit ordering description and that there is no duplication of an already existing product or commodity number.
- C. Inventory Management, inventory control section shall establish a commodity number for products submitted by the User Department/Project Manager and verify authorized signatures on Chemical Commodity Requisitions.

### **6.6.1 Definitions**

- A. Chemical Commodities: Materials, which contain ingredients, that meets the definition of a hazardous chemical as defined in the Title 8, California Code of Regulations, General Industry Safety Orders, Section 5194 as a chemical that may cause or contribute to serious negative health effects.
- B. Hazardous Chemical: A chemical (or mixture of chemicals) that is either toxic; an irritant; corrosive; a strong oxidizer; a strong sensitizer; combustible; flammable; reactive; pyrophoric or pressure-generating; or that otherwise may cause substantial acute or personal injury or illness during, or as a direct result of, any customary or reasonably foreseeable handling or use.
- C. Flammable Substance: Any substance having a flash point below 100 degrees Fahrenheit (37.8 degrees Celsius) when tested by (1) Taglabue Closed Tester in accordance with American National Standard Institute (ANSI/ASTM D56-79) or (2) Pensky Martens Closed Tester in accordance with ANSI/ASTM D93-80.



- D. Toxic Chemical: Any substance listed in the most recent edition of the National Institute for Occupational Safety and Health "Registry of Toxic Effects of Chemical Substances".
- E. Pressure-Generating Chemical: A chemical falling within one of the following categories:
  - 1. A chemical that generates pressure unless protected from spontaneous polymerization by the addition of an inhibitor, or by refrigeration or other thermal control.
  - 2. A chemical that may decompose to release gas in its container.
  - 3. A chemical that comprises the contents of a self-pressurized container.
- F. Pyrophoric Chemical: A chemical that will ignite spontaneously in dry or moist air at a temperature of 130 degrees Fahrenheit (54.4 degrees Celsius or below).
- G. Patch test: Small-scale field test of a product being considered for purchase. Manufacturer, vendor or MTA personnel in the presence of prospective User Department/Project Manager representatives who will evaluate effectiveness perform test.
- H. New Chemical Commodity: One which has not been qualified for intended use and/or one for which a new commodity number must be issued.

### **6.6.2 Purpose**

To describe the steps necessary for the procurement of new Chemical Commodities, including Cleaners, Paints, Solvents, Lubricants, Adhesives, and Graffiti Removers and to control the numbers and types of such commodities within the system.

### **6.6.3 MTA Procedures**

- A. All new Vendor product solicitations shall be referred to the Purchasing Division, who will inform the vendor of MTA procedures and/or provide the required forms.
- B. Purchasing Division shall send to interested vendor(s) a form letter with a Material Safety Data Sheet (MSDS) which will list all required information concerning the product for consideration, which the vendor shall complete.
- C. Interested vendors shall return the completed product data sheet (MSDS) to Procurement, to the attention of Inventory Management.
- D. Purchasing shall acknowledge receipt of the Vendor(s) product inquiry within sixty days, with a copy to Procurement, Director of Purchasing & Inventory Management.
- E. Purchasing will forward to the User Department/Project Manager who shall review data submitted by Vendor to determine compliance with specification or ordering description requirements. Risk Management shall review data to ensure that the product is not an environmental or safety hazard and shall approve or disapprove it for use in the MTA.
- F. If the product satisfies the determinations made above and a "patch test" is required, the User Department shall have the option of having manufacturer, vendor or MTA personnel perform the "patch test." The vendor shall provide:
  - 1. The necessary samples for the test; and



2. Personnel, if testing is to be performed by the vendor.
- G. If the product test is accepted or it otherwise shows promise for acceptance, the vendor shall supply the appropriate amount of product samples to the User Department who shall perform necessary analysis as to content to confirm the vendor's product data. Laboratory results shall be submitted to the Risk Management Department.
- H. The User Department shall submit the Laboratory Analysis, and all vendor-provided data (such as dilution, handling methods and other specific use procedures) to the System Safety Department.
- I. Risk Management shall provide a written Chemical Evaluation Form to the potential User Department/Project Manager indicating any occupational hazards and/or safety measures required in use, handling, storage, and disposal of the product under consideration within sixty (60) days of receipt of the product data from the user department.
- J. If, after the Chemical Evaluation review, the product merits further consideration, the User Department/Project Manager shall submit a formal requisition for an amount required for an Initial Field Test to be carried out by the User Department/Project Manager. Each department will develop its own testing procedure.
- K. Upon completion of the Initial Field Test, performance data shall be evaluated by the User Department/Project Manager and if required, by the Risk Management Department to reevaluate the environmental and safety aspects in field use.
- L. If the Initial Field Test results are positive, an Extended Field Test shall/may be scheduled at the option of the User Department/Project Manager. For the Extended Field Test, a formal requisition shall be prepared by the User Department/Project Manager and submitted to Procurement for acquisition of the required quantity.
- M. If the product successfully passes the Extended Field Test, or after the Initial Field Test (if further testing is not indicated as determined by the User Department/Project Manager) and has its aforementioned Hazardous Materials approval, the product shall be presented to the committee for Standardization for information and review by all potential users.
- N. An Item Master Form "Request for Stock Set-up" shall be submitted to the Inventory Control Section of Inventory Management to either establish a new commodity number for the product (if it represents a new functionality) or to add it to an existing commodity number. This form shall be submitted by the User Department/Project Manager and shall have the signature of an authorized person who shall be identified to the Committee Chairperson - Standardization, and/or shall be initialed by one of the standing members of the Committee. Each product submitted to Inventory Control must be accompanied by either a specification reference or explicit ordering description (prepared by User or other source) and include labeling and container requirements as part of the ordering description.

#### **6.6.4 Responsibility**

- A. Procurement is responsible for receiving vendor inquiries and informing the vendor of MTA procedures. They shall also assist vendor(s) in providing necessary information to User Department and to insure that the procedure is initiated by the User Department.



- B. User department responsibilities include:
  - 1. Referring all vendor inquiries to Procurement.
  - 2. Reviewing initial data submitted by vendors through Procurement and to respond to the Executive Officer, Procurement, indicating interest, if any;
  - 3. Scheduling a Patch Test, if applicable;
  - 4. Submitting analysis and vendor data to the Risk Management Department for Chemical Evaluation review;
  - 5. Arranging, if warranted, an Initial Field Test and an Extended Field Test (when necessary) to confirm approval or disapproval of the product;
  - 6. Submitting all information on an acceptably tested product to the Standardization Committee;
  - 7. Presenting the product according to the standard procedures established by the MTA; and
  - 8. Submitting a request to Inventory Control to assign a commodity number to the approved product. Included must be a specification reference and other necessary information.
- C. Risk Management Department shall assist the User Department in reviewing the data submitted by vendor and evaluate the environmental/safety impact of the Initial Field Test (Chemical Evaluation Review).
- D. Standardization Committee shall bring together all User Departments for the purpose of discussing, sharing information and establishing procedures for the procurement and qualification of Chemical Commodities.
- E. The committee shall also jointly review all newly qualified products to insure that the product has an established specification or explicit ordering description and that there is no duplication of an already existing product or commodity number.
- F. Inventory Management, Inventory Control Section shall establish a commodity number for products submitted by the User Department and verify authorized signatures on Chemical Commodity Requisitions.



### 6.6.5 Qualified Products List

#### A. Product Types Eligible For The QPL

1. The Board of Directors has authorized the Chief Executive Officer, under the Public Contract Code, to establish MTA-wide purchasing standards, the purpose of which is to ensure the necessary quality of supplies and equipment purchased by or under the supervision of the MTA, and to permit the consolidation of purchases in order to effect greater economy in MTA purchasing. For reasons of efficiency, economy, compatibility, or maintenance reliability, there is a need for standardization as to various supplies, materials, and equipment. A qualified products list (QPL) is required in order to achieve this objective.
2. In order to update and maintain an efficient QPL, the following procedures shall be implemented:
  - a. The Director of Inventory Management (DIM) shall determine specific item(s) that, for reasons of efficiency, economy, compatibility, maintenance reliability or safety, need to be standardized.
  - b. A specific written record for each item stating the necessity for establishing the QPL shall be kept by the DIM.
  - c. A written record shall be kept by the DIM, which details the requirements that shall be met for a product to become qualified and the procedures that must be followed.
3. The QPL shall be reviewed no less than two times per year. The purpose of this review is to evaluate additions or deletions from the QPL.
4. A notice prepared by the D.I.M. shall be published by the MTA at least once a year in a newspaper of general circulation which:
  - a. Advertises the existence of, and all additions to the QPL;
  - b. States that the QPL is available for public inspection;
  - c. Specifies the title and address of the MTA's office which may be contacted in regard to the procedure for compilation of the QPL and for information as to when products may be submitted for pre-qualification;
  - d. Lists all QPL items by generic descriptions;
  - e. Lists prospective purchase quantities forecast for future requirements for each item.
5. A contract for an item on the QPL may be awarded as follows:
  - a. Without competitive bidding if only one source for the item is specified on the QPL, upon a finding by the Board pursuant to Public Contract Code that it is a sole source procurement.
  - b. By competitive sealed bidding after advertising whenever multiple products are identified by the QPL.



- B. Each user department is responsible for submitting, to Procurement, required information for each item to be placed on the QPL such as stock number description or specification (preferable generic rather than brand name), previously approved products, estimated annual requirements for the item and the reason the addition of the item to the QPL is necessary. User departments are also responsible for requesting any deletions from the QPL should item(s) no longer be needed or if vendor(s) no longer offer a product which has been qualified and for ensuring that listings they have requested are accurate.
- C. The DIM is responsible for maintaining the QPL, e.g., adding and deleting items as requested and providing user departments with copies of the QPL on a quarterly basis. Items will be carried on the QPL for two years after which the items will be deleted unless renewed by the user department.

#### **6.6.6 Alternate Product Certification Process For QPL**

- A. Vendors seeking to qualify their product may apply by submitting an independent laboratory certification concluding that the product has been analyzed and confirmed as meeting or exceeding the MTA's specifications and/or performance requirements. The certifying laboratory must be accredited by the American Council of Independent Laboratories, Inc. or be otherwise acceptable to the MTA. This independent certification must be submitted to the MTA in the same time period as that called for in Section 6.6.5.
- B. The MTA reserves the right in each case to independently confirm the certification or to obtain further independent lab certification that the vendor product does in fact meet the specifications and/or performance requirements.
- C. The principal burden of providing certification and the expense thereof is to be borne by the vendor. In some instances, the MTA may consider assuming all or a portion of the burden of such expense.
- D. Certifications prepared in support of QPL item qualification will only be considered if submitted independent of and prior to any pertinent solicitation. However, such QPLs may not be used for purchases financed with Federal funds. QPLs may be used for projects financed with Federal funds, but vendors must be given the opportunity to qualify during the solicitation period.

#### **6.6.7 Award Restricted To Items On The QPL**

If the bid solicitation package calls for an item on the Qualified Products List, Procurement shall verify that the product offered is so listed, and thereby deemed acceptable. A bid offering a product not listed on the QPL prior to the solicitation will be deemed non-responsive for that solicitation. However, if such offering is certified per Section 6.6.6, it will be included in the QPL for subsequent solicitations.



**7.0 Policy**

- A. In accordance with Public Utilities code (PUC) 130232, Competitive Bidding is required as follows:
  - 1. The contract shall be let to the lowest responsible bidder when the purchase price of all supplies, equipment, and materials exceeds forty thousand dollars (\$40,000), and the construction of all facilities exceeds twenty-five thousand dollars (\$25,000).
  - 2. Exceptions are PUC 130237, 130238, PCC 20216 and 20217

**7.1 Scope**

- A. The primary method of procurement is the competitive sealed bid, which results in a fixed price contract awarded to the lowest responsive and responsible bidder. State laws applicable to the MTA require the use of sealed bidding, also known as Formal Advertising, under almost all circumstances for purchasing supplies, materials and construction and equipment when the cost of said purchase are estimated to exceed the small purchase threshold. Publicizing and public opening of bids is required. In order for sealed bidding to be most effective, the following conditions should be present:
  - 1. A complete, adequate and sufficiently generic specification is developed;
  - 2. Adequate competition is available in the marketplace (two or more responsive and responsible bidders will compete); and
  - 3. The procurement lends itself to a firm-fixed price contract.
- B. Rules regarding the preparation of the Invitation For Bid (IFB), and the bid and award processes are described. Two-step sealed bidding is an authorized procedure which combines sealed bidding procedures with those used in competitive proposal transactions.

**7.2 General Requirements**

- A. The IFB is developed by the Acquisition Team. The Contracting Officer assures that all required IFB contract clauses and provisions are included in the IFB, including FTA requirements when Federal funds are used.
- B. The Contracting Officer shall solicit formal bids for Construction, reconstruction, facility improvements, supplies, equipment, materials, and service requirements expected to exceed \$25,000 using the sealed bidding process except when other procurement methods are specifically allowed pursuant to the provision found in Chapter 8, Competitively Negotiated Contracts .
- C. Each IFB shall be publicized and subsequent bids be publicly opened.
- D. Bids shall be solicited from an adequate number of suppliers to assure full and open competition.
- E. If it is determined that an IFB is to be canceled (See Section 7.11 below) or the Board elects to cancel the IFB, and that the use of negotiation is appropriate to complete the procurement , the Contracting Officer shall proceed in accordance with Chapter 8.





- F. Bids shall be evaluated without discussions with bidders.
- G. Award shall be made by use of a fixed-price contract or fixed price with economic price adjustment (See Section 5.9 above).
- H. Award is made to the responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.
- I. When award will be based upon lowest evaluated bid prices as specified in the IFB, price-related factors such as discounts, transportation costs, and life-cycle costs shall be considered in determining which bid is lowest.
- J. Information concerning proposed acquisitions shall not be released outside the MTA before solicitation, except for pre-solicitation notices.

**7.3 Small Business Diversity Requirements**

Any solicitation that exceeds the MTA Diversity and Economic Opportunity Department's (DEOD's) Disadvantaged/Small business threshold, requires review by DEOD for goal determination (See Chapter 3).

**7.4 Solicitation Requirements**

- A. The Contracting Officer shall prepare each IFB including appropriate standard forms and provisions.
- B. The solicitation should contain the following as appropriate to the nature of the contract requirement, i.e., for supplies, equipment, services, or construction:
  - 1. The solicitation and contract form prescribed by the MTA;
  - 2. Date solicitation issued;
  - 3. Date, hour, and place of bid opening. (Local time shall be used);
  - 4. A description of the supplies or services required; quantities; prices (after award);
  - 5. Any descriptions or specifications needed in addition to (B) (4) above that are necessary to permit full and open competition; a description of the services required and any drawings, plans, and complete and realistic technical specifications that are not restrictive of competition and in sufficient detail to permit full and open competition;
  - 6. A requirement that all bids must allow a period for acceptance, i.e., up to one hundred twenty (120) calendar days from the date of bid opening;
  - 7. A small business goal requirement;
  - 8. In unusual cases, where bidders are required to have special technical qualifications due to the complexity of equipment being procured or for some other special reason, a statement of such qualifications;
  - 9. When applicable, packaging, packing, preservation, and marking requirements;
  - 10. Inspection, acceptance, quality assurance, reliability and warranty requirements;
  - 11. Requirements for time, place, and method of delivery or performance;



12. Requirements for accounting and appropriate data and any required contract administration information;
13. Special contract requirements; e.g., bid guarantee, bonds, insurance, liquidated damages, progress payments;
14. Contract clauses or provisions required by State, local or Federal laws or regulations;
15. A list of documents, exhibits, and other attachments;
16. Representations, certifications, and other statements required of bidders;
17. Instructions, conditions, and notices to bidders;
18. Evaluation factors for award, such as any price related factors other than the bid price;
19. Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference;
20. Necessary provisions to ensure that, pursuant to the MTA's Small Business Diversity policy and FTA's DBE regulations, 49 CFR Part 26, small and disadvantaged businesses will be given the maximum feasible opportunity to compete for contracts and subcontracts;
21. A notice to bidders that all bids, materials and correspondence will be subject to the California Public Records Act after award;
22. Conflict of Interest Policy Statement and filing requirements;
23. Any special provisions necessary for the particular procurement relating to payment terms, invoicing, accounting data, etc.;
24. Statement of Business and Financial Qualifications, if applicable;
25. Contract Clauses Or Provisions Required By State, Local Or Federal Laws Or Regulations;
26. A statement indicating whether award will be made on the basis of the lowest bid price or the lowest evaluated bid price, whichever is applicable. If the lowest evaluated bid price is the basis for award, the objective measurable criteria to be used shall be set forth in the IFB. The objective measurable criteria shall be related to price;
27. The IFB shall require written acknowledgment by each bidder of the receipt of all amendments, addenda, and changes issued; and
28. If appropriate, Descriptive Literature (See Section 7.10) and Bid Sample (See Section 7.9) requirements.

## **7.5 Public Works Contracts**

- A. For public works contracts IFB's shall also contain the following information:
  1. Contract milestones and schedule information;
  2. State prevailing wage and apprenticeship requirements, as applicable and Federal requirements if financed with Federal funds;



3. A range of estimated costs including, when applicable, options or alternatives, however, cost ceilings or budget prices must NOT be included in IFB's; and
4. Inspection, acceptance, quality assurance, reliability and warranty requirements.

#### **7.6 Bid Requirements**

Each bid shall be based upon specifications contained in the IFB, and each bid shall be typewritten or written legibly in ink. The person who signs the bid shall initial all alterations in ink. Each bid, shall be signed in ink. Each bid shall be submitted based upon requirements in the IFB.

#### **7.7 Time For Submission Of Bids**

The Contracting Officer shall provide a reasonable time for prospective bidders to prepare and submit bids in all IFB's consistent with the needs of the MTA. PUC 130232 requires that publication be made at least ten (10) calendar days before bids are due.

#### **7.8 Place And Method Of Delivery Of Supplies**

All materials and supplies are to be solicited F.O.B. destination unless otherwise determined to be in the best interest of the MTA.

#### **7.9 Bid Samples**

- A. The IFB shall state when the bidder is required to furnish samples.
- B. The Contracting Officer shall not require bidders to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specifications or purchase description. If bid samples are required, the IFB shall list all of the characteristics for which the samples will be examined.
- C. Bid samples shall be used only to determine the responsiveness of the bid and shall not be used to determine a bidder's ability to produce the required items.
- D. The Contracting Officer shall reject a bid as non-responsive if the sample fails to conform to each of the characteristics listed in the IFB.
- E. If samples are required, the reasons why acceptable products cannot be procured without the submission of bid samples will be set forth by the user department and filed in the contract file.

#### **7.10 Descriptive Literature**

- A. Each IFB shall state whether the bidder is required to furnish descriptive literature.
- B. The Contracting Officer shall not require bidders to furnish descriptive literature unless the Contracting Officer needs it to determine before award whether the products offered meet the specifications or to establish exactly what the bidder proposes to furnish.
- C. The Contracting Officer shall document, in writing, the reasons why product acceptability cannot be determined without submission of descriptive literature and shall include the document in the contract file.



- D. The IFB shall clearly identify the following:
1. The descriptive literature required to be furnished;
  2. The purpose for which the literature is required;
  3. The extent to which the literature will be considered in the evaluation of bids; and;
  4. The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature furnished does not comply with the requirements of the IFB.
- E. Unsolicited descriptive literature not required by the IFB shall not be considered as qualifying the bid and shall be disregarded unless it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid.

#### **7.10.1 Restrictions On Disclosure Of Descriptive Literature**

Unless the IFB provides for otherwise, when a bid is accompanied by descriptive literature and the Bidder imposes a restriction that such literature may not be publicly disclosed, such restriction renders the bid non-responsive if it prohibits the disclosure of sufficient information to permit competing Bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price and delivery terms. Unless required otherwise, descriptive literature restricted by a Bidder against public disclosure is subject to the Public Records Act.

#### **7.11 Cancellation Of Invitation For Bids Before Opening**

- A. An IFB shall not be canceled before opening unless the Contracting Officer determines that cancellation is in the best interests of the MTA.
- B. A decision to cancel an IFB prior to opening shall be made by the Contracting Officer when it is the best interest of the MTA for reasons such as:
1. Inadequate or ambiguous specifications were cited in the IFB;
  2. Specifications have been revised;
  3. Supplies or services being contracted for are no longer required; or
  4. The IFB did not provide for consideration of all factors of cost to the MTA.
- C. If an IFB is cancelled before opening, bids that have been received shall be returned unopened to the bidders.
- D. The Contracting Officer shall send a notice of cancellation to all prospective bidders to which IFB's were issued.
- E. The IFB file shall document the decision to cancel and record the number of bids invited and the number of bids received.

#### **7.12 Pre-Bid Conferences**

- A. The Contracting Officer may use pre-bid conferences to explain procurement requirements.
- B. Pre-bid conferences shall be announced to all prospective bidders in the IFB.



- C. The pre-bid conference shall be held as early as possible after the IFB has been issued and before the bids are opened.
- D. Any substantive clarification resulting from the Pre-bid conference should be identified in an addendum. Nothing stated at the pre-bid conference shall change the IFB unless the Contracting Officer makes a change by written amendment.
- E. The Contracting Officer shall prepare a written report of the conference and shall make a copy available to all prospective bidders and other attendees.
- F. If the MTA requires any type of mandatory pre-bid conference, site visit, or meeting, the IFB shall include the time, date, and location of the mandatory pre-bid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory pre-bid site visit, conference or meeting shall be no sooner than a minimum of five calendar days of the publication of the initial notice.

**7.13 Addendum Of Invitation For Bids**

- A. Addenda to an IFB shall be identified as such and shall require the bidder to acknowledge receipt of all addenda issued.
- B. If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or other items, or to correct a defective or ambiguous IFB, the change shall be accomplished by addendum of the IFB.
- C. Each addendum shall reference the portion of the IFB it amends.
- D. The Contracting Officer shall send each addendum to all prospective bidders to which an IFB has been furnished.
- E. The Contracting Officer shall distribute each addendum within a reasonable time to allow all prospective bidders to consider the information in submitting or modifying their bids. Special rules regarding addenda to incorporate Davis-Bacon wage rate decisions are set forth in 29 CFR Part 1.6.
- F. If, because of an addendum, the time and date for receipt of bids is not sufficient to permit preparation of the bid, the Contracting Officer shall consider increasing the time for submission of the bids. This can be done in the addendum or, if necessary, by electronic transmission and confirmed in the written addendum.

**7.14 Records Of Invitation For Bids And Records Of Bids**

- A. Procurement must retain a record of every Invitation for Bids issued and of each abstract or record of bids, known as the Bid Tabulation Sheet or Bid Summary Sheet.
- B. The complete planholders list will be included in the contract file.

**7.15 Responsiveness Of Bids**

- A. To be considered for award, a bid must comply in all material respects with the Invitation for Bids, both as to the method and timeliness of submission and as to the substance of any resulting contract, so that all Bidders may stand on equal footing and the integrity of the formal advertising system may be maintained.



- B. Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the Invitation for Bids. Bidders must use the bid form furnished by the MTA to assure uniformity in bids.

#### **7.16 Time Of Bid Receipt**

Bids must be received in the office designated in the Invitation for Bids not later than the time identified in the Invitation for Bids. If no time is specified in the IFB, the time for receipt is 2:00 pm local time on the date that bids are due.

#### **7.17 Late Bids**

Bids are considered late based on the time clock at the Procurement Receptionist Desk if the time is later than that identified in the Invitation for Bids. Unless a bid is late owing solely to MTA mishandling, late bids will not be accepted by the MTA.

#### **7.18 Modification Or Withdrawal Of Bids Before Bid Opening**

- A. A bid may be modified or withdrawn by written request submitted by mail or in person. The designated official identified in the IFB must receive the request prior to the exact time of bid opening.
- B. Modifications received shall be sealed in an envelope by the Procurement Receptionist desk and time and date stamped to evidence receipt. No information contained in the envelope shall be disclosed before the time set for the bid opening.
- C. If a bid is withdrawn in accordance with this section, any bid guarantee shall be returned to the bidder.
- D. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate contract file.

#### **7.19 Rejection Of Individual Bids**

- A. Any bid that fails to conform to the essential requirements of the IFB shall be rejected.
- B. Any bid that does not conform to the applicable specifications shall be rejected unless the IFB authorized the submission of alternate bids and the supplies or services offered as alternates meet the requirements specified in the IFB.
- C. Any bid that fails to conform to the delivery schedule or permissible alternates stated in the IFB shall be rejected.
- D. A bid shall be rejected if the bidder imposes conditions that would modify requirements of the IFB or limit the bidder's liability to the MTA. For example, a bid shall be rejected if the bidder does the following:
  - 1. Protects against future changes in conditions, such as increased costs, if total possible costs to the MTA cannot be determined;
  - 2. Fails to state a price and indicates that price shall be "price in effect at time of delivery" or words of equivalent meaning;



3. When not authorized by an IFB, the bidder conditions or qualifies a bid by stipulating that it is to be considered only if, before award date, the bidder receives (or does not receive) award under a separate solicitation;
  4. Requires that the MTA is to determine that the bidder's product meets applicable MTA specifications; or
  5. Limits the rights of the MTA under any contract clause.
- E. A bid received from any bidder that is suspended, debarred, or otherwise ineligible to receive a Federal contract shall be rejected if the period of suspension, debarment, or ineligibility has not expired by the bid opening date.
- F. Low bids received from bidders determined by the Contracting Officer to be not responsible shall be rejected.
- G. When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the IFB, the bid shall be rejected.
- H. Contracting Officers are authorized to reject bids that are non-responsive and to make non-responsibility determinations. Procedures for rejecting bids shall be in accordance with Section 7.27.2 of this Chapter.
- I. The originals of all rejected bids, and any written findings with respect to the rejections, shall be maintained in the contract file.

#### **7.20 All Or None Qualifications**

- A. Unless the solicitation provides otherwise, a bid may be responsive even though the bidder specifies that award will be accepted only on all, or a specified group, of the items.
- B. Bidders shall not be permitted to withdraw or modify an "all or none" qualification after bid opening because "all or none" qualifications are substantive and affect the rights of other bidders.

#### **7.21 Minor Informalities Or Irregularities In Bids**

- A. Minor informalities or irregularities in bids may be waived if the Contracting Officer determines that the waiver is in the best interest of the MTA.
- B. Minor informalities or irregularities may include but are not limited to the following:
1. When a bidder fails to return the number of copies of signed bids required by the IFB;
  2. When the bidder fails to furnish information concerning the number of its employees;
  3. When a bidder fails to sign its bid, but only if one (1) of the following applies:
    - a. The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself);  
or



- b. The firm submitting the bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature; submits evidence of that authorization; and the bid carries the proper signature.
4. When the bidder fails to acknowledge receipt of an amendment to the IFB, but only if one (1) of the following applies:
  - a. The bid received clearly indicates that the bidder received the amendment (such as where the amendment added another item to the IFB and the bidder submitted a bid on the item); or
  - b. The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.
- C. When it is in the best interest of the MTA the Contracting Officer shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or waive the deficiency.

## **7.22 Bid Informalities**

- A. A bidder, under the sealed bid procurement method may not be permitted to change its bid because of a mistake. However, a bidder may seek to be relieved of its bid due to a mistake (i.e. rescind its bid) by notice to the MTA in writing within the manner and time period specified by applicable law.
- B. The final determination with respect to allowing a bidder to rescind its bid due to a mistake shall be made in accordance with the terms and conditions of the Invitation for Bids (IFB) by the Contracting Officer within the limits of his/her contract authority (subject to the Office of County Counsel's concurrence, when appropriate).

### **7.22.1 Mistake In Bids After Award**

- A. Bid mistakes are not always discovered prior to contract award. Post award mistakes are those that arise because:
  1. A mistake in bid was not recognized prior to contract award;
  2. The formal contract document does not reflect the actual agreement of the parties.
- B. In the first situation the mistake is unilateral (the bidder's) and one that the MTA had no actual or constructive knowledge of before contract award. Relief from the mistaken bid is available only before award, and on limited grounds. The second category covers mutual mistakes where the formal agreement does not reflect the actual agreement of the parties, either because the MTA has erred in its specification, or in the drafting of the contract, which has been executed by both parties.
- C. If a mistake in a bid is not discovered until after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the MTA without changing the essential requirements of the specifications.





- D. In addition to the cases contemplated in the section above or as otherwise authorized by law, if a mistake in a bid is not discovered until after award, the appropriate MTA official that approved the procurement action is authorized to make one of the following determinations:
1. To rescind a contract;
  2. To reform a contract to: (i) delete the items involved in the mistake or (ii) to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB; or
  3. That no change shall be made in the contract as awarded.
- E. If the Board approved the awarded contract, the Board must approve any of the determinations in 7.22.1, (D1) through (D3) above. Determinations under 7.22.1 D1 and D2 above shall be made only on the basis of clear and convincing evidence that a mistake in bid was made. It must be clear that the mistake was either mutual, or (if unilaterally made by the contractor, so apparent as to have given the Contracting Officer notice of the probability of the mistake.
- F. Each proposed determination shall be submitted to County Counsel for review.
- G. The contract file shall contain a record of each determination made in accordance with this Section, the facts involved, and the action taken.

#### **7.22.2 Bid Mistake In Construction And Purchase Contracts And Contracts Solicited By IFB**

A Bidder under competitive bidding requirements may not be permitted to change its bid because of a mistake. However, a bidder may seek to rescind its bid due to mistake, but must notify the MTA in writing within five calendar days after public opening of the bids. Relief of bidders for bid mistake on public works, is governed by state law, Public Contracts Code sections 5100, et seq.

#### **7.22.3 Requirements**

- A. A bidder shall not be relieved of the bid unless by consent of the MTA, nor shall any change be made in the bid because of mistake (Ref. Public Contracts Code section 5101).
- B. The MTA may consent to a bidder being relieved of its bid if all of the following grounds are established:
1. A mistake was made;
  2. The bidder gave the MTA written notice within five days after opening of bids of the mistake specifying in the notice in detail how the mistake occurred;
  3. The mistake made the bid materially different than bidder intended it to be; and
  4. The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications. (Ref. Public Contracts Code, Section 5103)
- C. Office of Procurement will prepare a report in writing to document the facts establishing the existence of each element required to establish a basis for relieving the bidder of its bid. The



bidder will be requested to produce physical evidence (e.g., bid preparation documents) that will reasonably allow the MTA to make a determination that a mistake was made.

- D. The bidder who claims a mistake or who forfeits its bid security shall be prohibited from participating in further bidding on the project on which the mistake was claimed or security was forfeited. (Ref. Public Contracts Code, section 5105)

#### **7.22.4 Bid Mistake In Service Agreements And Miscellaneous Procurement Contracts**

- A. The following procedures may only be implemented when there is corresponding language in the solicitation.
- B. A Bidder who seeks to rescind its bid due to a mistake or error in preparation of its bid, must, within five business days of public opening, so notify the MTA in writing. The notice must include details of the error or mistake. In addition to a bid or proposal on which the Bidder claims a mistake, all bids must be examined for mistakes after receipt. In cases of apparent mistakes, and in cases where there is reason to believe that a mistake may have been made, the Bidder shall be requested to verify the bid or proposal, calling attention to the suspected mistake. If the Bidder alleges a mistake, the matter shall be processed in the manner set forth below. Such actions shall be taken prior to award.
- C. Although not required by statute, purchase contracts will use these procedures unless otherwise approved by the Office of the General Counsel and the Executive Officer, Procurement.

#### **7.22.5 Apparent Clerical Mistakes**

Any clerical mistake apparent on the face of a bid may be corrected by Procurement prior to award, after obtaining from the Bidder written or telegraphic verification of the bid actually intended. Examples of such apparent mistakes are obvious error in placing decimal point or obvious error in designation of unit. Correction of the bid will be effected by attaching the verification to the original bid. Correction will not be made on the face of the bid; however, it shall be reflected in the award document.

#### **7.23 Other Mistakes**

- A. The Office of Procurement is authorized to make the following administrative determinations in connection with mistakes in bids/proposals, other than apparent clerical mistakes, alleged after opening of bids/proposals and prior to award.
- B. When the Bidder requests permission to withdraw a bid and clear evidence establishes the existence of a mistake, a determination by the Executive Officer, Procurement or designee, permitting the Bidder to withdraw its bid may be made.
- C. However, if the evidence is clear both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination by the Executive Officer, Procurement or designee, may be made to correct the bid and not permit its withdrawal.
- D. When the Bidder requests permission to correct a mistake in its bid and clear evidence establishes both the existence of a mistake and the bid actually intended, a determination



permitting the Bidder to correct the mistake may be made, provided that, in the event such correction would result in displacing one or more lower bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable from the invitation and the bid itself. If the evidence is clear only as to the mistake, but not as to the intended bid, a determination by the Executive Officer, Procurement or designee permitting the Bidder to withdraw its bid may be made.

- E. When the evidence is not clear that the bid, as submitted, was not the bid intended, a determination by the Executive Officer, Procurement or designee may be made requiring that the bid be considered for award in the form submitted.

## **7.24 Bid Receipt And Opening**

(Also see Bid Opening Procedures -

<http://intranet1/procurement/Resource%20Center/Forms/Bid%20Opening%20Instructions.doc>

### **7.24.1 Receipt Of Bid**

As bids are received, the MTA official shall secure and safeguard the bids until the established time for bid opening.

### **7.24.2 Opening Of Bids**

The person designated as the Contracting Officer shall coordinate the bid opening. All bids over \$25,000 for construction or over \$40,000 for supplies, equipment and materials, received prior to the bid opening will then be publicly opened, read aloud to the persons present, and recorded. If it is impracticable to read the entire bid, as where many items are involved, the total amount of each bid will be read.

### **7.24.3 Recording Of Bids**

The bids shall be recorded on a Bid Summary or Bid Tabulation sheet. Any apparent or potential problem with any bid that is noted at the time of bid opening should be indicated on the Bid Summary Sheet. The MTA's Contracting Officer will certify the accuracy of the Bid Summary Sheet, and certify that opportunity was provided for public inspection of all opened bids, by placing his/her signature thereon. The MTA's Contracting Officer will then ensure that these results are posted on the MTA Internet site within a reasonable time after bid opening.

## **7.25 Evaluation Of Bids**

### **7.25.1 Policy**

Procurement shall conduct public bid openings for all sealed bids. Contracts for which either formal bids or quotations are solicited shall be awarded to the Contractor that submits the lowest responsive bid determined to be responsible.

### **7.25.2 Responsiveness Of Bid**

The responsiveness of the bid itself is determined by its conformance to the technical, legal, and commercial requirements of the bid documents. Generally, a bid is not responsive and may not be considered for award if it contains a deviation to any material factor, which affects price, delivery, quality or quantity of the articles or services furnished. The essential or material requirements of an IFB would usually include those pertaining to bid execution and the



specifications, among others. A bid will be rejected when the Bidder imposes conditions, which would modify requirements of the Solicitation Documents. The MTA may waive minor errors or omissions. The Contracting Officer may opt, at any point during the procurement process to submit a complicated bid to the Office of the County Counsel for interpretation and advice. For Responsibility policy, refer to Chapter 16.

### **7.25.3 Price Analysis Is Required For Sealed Bids**

A price analysis is required for sealed bids. See Chapter 15 for information on performing a price analysis.

### **7.25.4 Bid Evaluation**

- A. Evaluation of bids for responsiveness, responsibility, and price reasonableness is coordinated by the Contracting Officer. FTA 4220.1F requires the results of the evaluation to be documented to provide clear justification for contract awards.
- B. The Contracting Officer will make document the file as to whether or not a Bidder is considered responsible and responsive and the price offered is reasonable.

### **7.26 Bidder's Transfer Of Assets**

If a Bidder transfers all of its assets or that part of its assets related to the bid during the period between bid opening and the award, the MTA may elect to allow the transferee to take over the bid. The MTA will undertake to determine the responsibility of the transferee before an award is made. Transferee firms determined not to be responsible (or ineligible) for any reason by the MTA will be rejected.

### **7.27 Rejection Of All Bids/Cancellation Of Invitation For Bid After Opening**

Preservation of the integrity of the sealed bid system dictates that, after bids have been opened, award must be made to that responsible Bidder that submitted the lowest responsive bid unless there is a reason to reject all bids and cancel the IFB, however, MTA may at its discretion reject any and all bids. As a general rule after opening, an Invitation for Bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the initial Invitation for Bids and the additional quantity should be treated as a new procurement or an amendment using Chapter 11 procedures for a non-competitive procurement.

#### **7.27.1 Reasons For Cancellation/Determining Follow-Up Action**

- A. Reasons when an IFB must be canceled and bids rejected include, but are not limited to:
  1. All bids were non-responsive or at unreasonable prices;
  2. There is evidence of collusion or bad faith; or
  3. Competition was not adequate to assure a reasonable price. The Contracting Officer will undertake a Vendor survey to determine if re-issuance or modification of the Solicitation Documents would increase competition or if competitive negotiation or non-competitive procurement procedures should be undertaken (see Chapter 8, "Competitively Negotiated Contracts" and Chapter 11, "Non-Competitive and Emergency Procurement"). In such



instances, thorough documentation to support the action taken must be included in the files.

4. No responsible bidder
- B. An Invitation for Bid (IFB) may also be canceled after opening but prior to award if the goods/services are no longer needed or when the Procurement Department, in coordination with the User Department/ Project Manager and the Office of the County Counsel, determines that circumstances justify such action.

#### **7.27.2 Procedures For Rejecting All Bids**

- A. Once a decision is made to recommend the rejection of all bids and after the Vendor survey has been performed (if appropriate), the Contracting Officer takes the following steps:
1. Determine the recommended course of action, e.g., revise and reissue the solicitation, request authority to negotiate a non-competitive contract, cancel the entire procurement action. If PUC 130232 covers the item, and the decision is to purchase the items on the open market, prepare a Board Report requesting approval by 2/3 of the Board.
  2. If the decision is to cancel the action, prepare a letter recommending the rejection of all bids, for Board approval or if the contract is governed by California Public Utilities Code §130051.9 (c), for Chief Executive Officer approval. If the low bid on a solicitation is less than \$200,000 or there was no responsible bidder, the Chief Executive Officer or his delegate may reject the bids for that procurement.
  3. Upon receiving authorization, the Contracting Officer sends a letter to all of the Bidders advising them that all bids have been rejected, and usually also advising them whether they can expect a revised solicitation to be issued.
  4. Complete written documentation must be maintained in the contract file including copies of original bids, written recommendations from the User Department (and the Office of the County Counsel, if appropriate), records of communications with Vendors/Contractors, and a record of the basis for decisions made pertaining to the contract.

#### **7.28 Single Or Non-Responsive Bid**

- A. In the event a single bid is received in a sealed bid procurement, it is advisable that the MTA staff conduct both a canvas of Vendors to determine why there were no other Bidders and also an analysis which documents that the price is fair and reasonable.
- B. Where competitive bids are solicited and no responsive bids are received, an alternative procurement may be permissible under the non-competitive procedures set forth in Chapter 11.

#### **7.29 Tied Bids**

- A. The resolution of an apparent tie is performed as follows:
1. Arithmetic calculations are checked to confirm that the bids are identical and the bids are reviewed for responsiveness.



2. If the bids are tied and responsive, the Contracting Officer advises the tied Bidders, in writing, that a tie has occurred and they are invited to attend the determination of the winning Bidder. This will be accomplished by the drawing of lots.
3. The date, time and method of this determination will be established by written notice but does not require the attendance of the Bidders.
4. This process will be witnessed by the Contracting Officer and a Procurement manager or higher.

**7.30 Award Process**

**7.30.1 Award**

Unless all bids are rejected, award must be made by the MTA by written notice, within the time for acceptance specified in the bid. Award will be made to the lowest responsive, responsible Bidder. Award will not be made until all required Executive and Board approvals have been obtained.

**7.30.2 Notification To Unsuccessful Bidders**

A. In order to afford unsuccessful bidders/offerors an adequate opportunity to protest proposed recommendations for award, the contracting officer shall provide adequate, timely notice of the recommendation for award or intent to award.

1. The contracting officer shall as a minimum;
  - a. Per March 2000 Board adopted policy, notify each unsuccessful bidder by fax or e-mail within a reasonable time after staff recommendation for award, that its bid was not accepted.
  - b. The dollar amount of the successful bid and the name and address of the successful bidder;
  - c. When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

**7.30.3 Delay Of Award**

Should administrative difficulties after bid opening threaten to delay award beyond Bidders' acceptance periods, the Contracting Officer may ask the Bidder(s) to extend the bid acceptance period (with consent of sureties, if necessary) to avoid the need for re-soliciting.

**7.30.4 Authority To Approve Contracts**

- 7.31** Appropriate acquisition team members prepares the request for approval to award a contract or purchase order, and then circulates it to obtain the concurrence (or non-concurrence) of affected Departments. Award of the contract will not be made until the appropriate approval level has been received.
- 7.32** A notice of award, in the case of public works contracts, is sent to the awardee, the successful bidder then must execute the contract within the designated time period, and then submit the required insurance and surety forms.



- 7.33** In the case of purchase contracts, a purchase order is executed by the authorized Contracting Officer and transmitted to the recommended vendor. Upon execution by the MTA, a binding contract is formed.

#### **7.33.1 Notice Of Award**

The Contracting Officer shall notify members of the public via posting on the MTA Internet site of the award. The notification posted on the Internet should include the contract name, description of work, prevailing contractor, engineer's estimate, amount of the final contract including contingency and rationale for the award.

#### **7.34 Two Step Sealed Bids For Services And Miscellaneous Procurements**

- A. Two-step sealed bidding requires the offerors to submit technical proposals for evaluation, and the subsequent request for sealed bids from those initial offerors who were determined to have submitted acceptable technical proposals.
- B. If there is any doubt as to whether a statutory procedure applies, consult the Office of County Counsel.

#### **7.34.1 General**

- A. Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding for Services and Miscellaneous Procurement contracts when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the MTA's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items.
- B. Two step sealed bidding is conducted in two steps:
  - 1. **Step One:** Consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved.
    - a. The objective is to determine the acceptability of the services, etc. offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements.
  - 2. **Step Two:** Involves the submission of sealed priced bids by those firms or individuals who submitted acceptable technical proposals for Step One. Sealed Bids will be received by Contracting Officer and shall be publicly read aloud by the Contracting Officer. Contracts are awarded following the procedures found in Chapter 7 or Chapter 8 whichever is appropriate.



**7.34.2 Conditions For Use**

- A. Unless other factors require the use of traditional sealed bidding, two-step sealed bidding may be used in preference to competitive negotiation when all the following conditions are present:
  - 1. Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the MTA.
  - 2. Definite criteria exist for evaluating technical proposals.
  - 3. More than one technically qualified source is expected to be available.
  - 4. Sufficient time will be available for use of the Two-Step Method.
  - 5. A firm-fixed price contract or a fixed price contract with economic price adjustment will be used.
- B. None of the following precludes the use of two-step sealed bidding:
  - 1. Multi-year contracting.
  - 2. MTA-owned facilities or special tooling to be made available to the successful bidder.
  - 3. A first or subsequent production quantity is being acquired under a performance specification.

**7.35 Contract File Documentation**

- A. Per FTA 4220.1FChapter III, Subsection 3.d.(1) Written Record of Procurement History requires the following be documented in the file:
  - 1. Rationale for the method of procurement (see Chapter 4
  - 2. Selection of Contract Type (see Chapter 4)
  - 3. Reasons for Contractor selection or rejection, and
  - 4. The basis for the contract price.



**8.0 Purpose And Scope**

- A. This Chapter outlines the MTA's procedures for competitively negotiated procurements for contracts:
  - 1. Not subject to the statutory requirements related to purchase and public works contracts; and
  - 2. Awarded on the basis of both price and non-price factors.
- B. A procurement is negotiated if exchanges between the MTA and the offerors are anticipated and planned in order to maximize the MTA's ability to communicate, understand, and obtain the best value for contract award. The exchanges after establishment of the competitive range are done with the intent of allowing the offeror to revise its proposal, once if not several times. The exchanges involve bargaining, persuasion, alteration of assumptions and positions, and give-and-take applied to price, schedule, technical requirements, type of contract, and other proposed terms.
- C. Competitively negotiated procurements can be done on the following types of procurements:
  - 1. Personal services contracts for non-architect-engineer related services; miscellaneous service contracts;
  - 2. Architect-Engineer and related services contracts (specialized requirements for these contracts are covered in Chapter 9);
  - 3. Specialized rail equipment, computers, telecommunications equipment, microwave equipment and other related electronic equipment and apparatus; and
  - 4. The following products and materials that undergo rapid technological changes or are new technologies themselves:
    - a. Computers, telecommunications equipment, fare collection equipment, radio and microwave equipment, and other related equipment and apparatus used in transit operations;
    - b. Specialized rail transit equipment, including, but not limited to, railcars;
    - c. Buses; and
    - d. Passenger ferries.

**8.1 Solicitation Of Proposals - General**

- A. A Request For Proposals (RFP) shall be the solicitation used to communicate the MTA's requirements to prospective contractors when the negotiated method seeking competitive proposals is used.
- B. For competitive solicitations the following apply:
  - 1. All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the selection plan and in the solicitation; and



2. When using a tradeoff process, the selection plan and the solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.
- C. Contracting Officers may authorize electronic proposals or facsimile proposals. Contracting Officers may, after the date set for receipt of proposals, request offeror(s) to provide the complete, original signed proposal.

## **8.2 Source Selection Methods And Techniques**

- A. The Contracting Officer can choose from a range of source selection techniques for the competitively negotiated process based on:
1. What is suitable for the specific circumstances of a requirement, and
  2. Which technique provides the best opportunity to tradeoff price/cost and qualitative benefits in order to gain the best value to the MTA.
- B. In acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role as a significantly important evaluation factor for award.
- C. On the other hand, the less definitive the requirement, a requirement for technical superiority, more development work required, or the greater the performance risk, then the technical or past performance considerations play a more dominant role as significantly important evaluation factors for award.
- D. The MTA obtains best value in negotiated acquisitions by using any one or a combination of selection approaches wherein the relative importance of cost or price may vary with other non-cost or price factor(s). The following is a discussion of various selection approaches. The Contracting Officer and Project Manager should select an approach that will provide the MTA with the best offer based on the requirements. This list is not exhaustive and new approaches are acceptable as long as they comply with the principle guidelines identified in Chapter 1.

### **8.2.1 Technically Acceptable Lowest Price Selection Process**

- A. The Technically Acceptable Lowest Price (hereinafter referred to as TALP) selection process is when the MTA awards the contract to the technically acceptable proposal with the lowest evaluated price. TALP is the least complex technique of competitively negotiated procurements.
- B. TALP is generally used when:
1. There are no significant differences between the products or services offered by different vendors;
  2. The specifications are detailed;
  3. The offeror's discretion is limited; or
  4. The scope of responsibility of the successful contractor will not be extensive.



- C. The technical evaluation team establishes the evaluation factors for the selection plan and the solicitation whereby proposals either completely satisfy or fail to meet the solicitation requirements. The factors and the subfactors for the requirements of acceptability shall be of sufficient detail to justify an evaluator's determination of minimum acceptability for each factor and subfactor.
- D. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for the non-cost factors.
- E. Competing technical proposals are evaluated against the solicitation requirements and rated against those acceptability requirements on a go - no go basis (acceptable -- unacceptable). Competing technical proposals are not compared with each other. The evaluations will be documented in sufficient detail to explain each go - no go decision. No additional credit is given for exceeding the acceptability requirements.
- F. Exchanges may occur. The major difference is that discussions can be held with offerors prior to award selection to ensure offerors understand the requirements and to determine acceptability.
- G. Tradeoffs on the basis of technical merit are not permitted.
- H. The prices or costs of technically acceptable proposals are compared, and award is made to the responsible low offeror.

### **8.2.2 Performance Price Trade-Off Selection Process**

- A. Performance Price Tradeoff (hereinafter referred to as PPT) permits tradeoffs between price/cost and the evaluation of past performance of an offeror with a technically acceptable proposal. The only factor being traded off with price/cost is past performance, not technical factors. Tradeoffs may occur on the basis of the comparative assessment of an offeror's past performance information and its evaluated price/cost.
- B. PPT is appropriate when it is unnecessary to distinguish levels of technical merit among the proposals received in order to make an award decision. Other reasons for the PPT technique are requirements for replenishment spares, operational contracting acquisitions, non-developmental, noncomplex services or supplies, service contracts with only threshold requirements, or requirements of low technical complexity.
- C. Technical acceptability may be broadly defined by factors and subfactors. Technical evaluators rate the technical proposals as either "acceptable," "not acceptable," or "reasonably susceptible of being made acceptable." Proposal weaknesses and deficiencies are identified and documented. Thereafter, unless award is made without discussions, discussions are conducted with all "acceptable" and "reasonably susceptible of being made acceptable" offerors within the competitive range. Offerors within the competitive range determined "reasonably susceptible of being made acceptable" are then asked to furnish proposal revisions reflecting the necessary changes addressed during discussions. At the conclusion of discussions, final proposal revisions are requested from offerors determined acceptable and within the competitive range. The results of the technical evaluation are documented depicting each offeror's proposal rating along with supporting narrative.



- D. The RFP solicitation must specifically state:
  - 1. Price
    - a. What pricing information shall be submitted by offerors on the proposal due date, and
    - b. How the total evaluated price of the offeror will be calculated by the MTA.
  - 2. Performance - what information is required from the offerors regarding past performance.
- E. The selection team shall assess the relevancy of performance in terms of type of work, size, and complexity. The quality of past performance will be assessed based on feedback from the offeror's other customers or from government past performance records. When performance is assessed, the degree of relevance of an offeror's experience may be weighed into the rating that is assigned. As always, the most emphasis should be placed on the quality of performance over the relevance of past performance.
- F. Clarifications may be conducted between the Offeror and the MTA as necessary to provide an offeror the opportunity to address any adverse past performance information, to clarify the relevancy of the offeror's past performance information, or to address minor clerical issues.
- G. The Contracting Officer or the Source Selection Committee will make an integrated past performance/price tradeoff assessment and may award to the technically acceptable offer other than the one with the lowest-evaluated price in order to provide the best value to the MTA.

### **8.2.3 Best Value Selection Process**

- A. A Best Value procurement (also known as full tradeoff best value) affords the MTA the most flexibility and business judgment to acquire technical superiority even if it means paying a premium price, in order to obtain the most advantageous offer to the MTA. Through Best Value, the differences between competing proposals, price as well as non-price factors, are assessed and considered in deciding whether a proposal is in the MTA's best interests.
- B. Best Value should be used for all other competitive negotiated acquisitions whenever appropriate.
- C. The Best Value procedure is a more complex form of selection, since it requires assessments of price and other non-price/cost factors used in some combination as a basis for comparing competing proposals. It is characterized by evaluating competing proposals against the solicitation requirements, performing an integrated assessment of each proposal, comparing proposals with each other in such a way as to trade off advantages and disadvantages of each proposal and the associated price or cost, and then making award to the responsible offeror whose proposal is determined to be the most advantageous overall to the Government, price and other factors considered.
- D. Best Value selection procedures are appropriate (a) when cost or price is not the only comparative evaluation factor and (b) when the MTA will benefit from comparison of proposals not only on the basis of cost or price, but also on other factors. This is often the case where, for example, requirements are difficult to define, have been historically troublesome or require a technological breakthrough. Best Value source selection



procedures are often used when the MTA's requirements are stated in terms of functional or performance specifications, and offerors will differ in their proposed solutions to the MTA.

- E. A mathematical or numeric weight analysis between evaluated prices and their respective non-price points is an unacceptable method of analysis to support a tradeoff analysis. The Source Selection Committee independently determines whether the non-cost advantages and benefits evaluated by the MTA evaluators are worth the cost/price that might be associated with a higher rated proposal. The decisive element is not the difference in proposal ratings (color, adjectival), but the "significance of the difference" in the proposal ratings, based on an integrated comparative assessment of the proposals evaluated.

#### **8.2.4 Explicit Factors Selection Process**

This selection process assigns mathematical weights to the evaluation factors in the solicitation. It predetermines the importance of the trade-off factors. This process includes both partially numerical scoring system that numerically score only non-price factors and totally numerical system.

### **8.3 Evaluation Factors**

- A. Evaluation factors and significant subfactors are tailored to each procurement and used by the SSC/SSA to make award decisions. They shall:
  - 1. Represent the key areas of importance and emphasis to be considered in the source selection decision; and
  - 2. Result in meaningful comparisons and discriminations between and among competing proposals.
  - 3. The RFP should identify all issues that will be considered in the evaluation in order to ensure that the offerors fully understand the evaluation procedures that will be followed. Exception to this is discussed in Section 8.12.
- B. The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of the MTA officials, subject to the following requirements:
  - 1. Offer Factors – elements of the evaluation that are incorporated into the contract:
    - a. Price or cost to the MTA shall be evaluated in every source selection;
    - b. Non-price or non-Cost Factors – if identified in the RFP; and
  - 2. Capability Factors – including past performance, experience, key personnel and understanding the work. The RFP shall clearly identify all capability factors that will be used to evaluate the proposals. Past performance should be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the small purchase threshold.
- C. The RFP shall clearly indicate the relative importance of all factors and significant subfactors of a source selection.



D. The solicitation shall also indicate whether all evaluation factors other than cost or price, when combined, are:

1. Significantly more important than cost or price;
2. Approximately equal to cost or price; or
3. Significantly less important than cost or price.

**8.4 Pre-Solicitation Notices And Conferences**

A. Pre-solicitation notices and conferences may be used as preliminary steps in procurements by competitive negotiations in order to accomplish any of the following:

1. Develop or identify interested sources;
2. Request preliminary information based on a general description of the supplies or services involved;
3. Explain complicated specifications and requirements to interested sources; or
4. Aid prospective contractors in later submitting proposals without undue expenditure of effort, time, and money.

B. If pre-solicitation notices are used, refer to Section 4.3 for policy regarding publication.

C. The Contracting Officer shall furnish copies of the solicitation to all those responding affirmatively to the pre-solicitation notice and to other prospective contractors upon their request.

**8.5 Pre-Proposal Conferences And Site Visits**

A. The Contracting Officer may hold a pre-proposal conference to brief prospective offerors after a solicitation has been issued but before offers are submitted. A site visit may also be planned for prospective offerors.

B. The Contracting Officer is responsible for the following:

1. Conduct the pre-proposal conference;
2. Furnish all prospective offerors identical substantial information concerning the proposed procurement;
3. Make a record of the substantial issues addressed at the conference;
4. Promptly furnish a copy of that record to all prospective offerors, and
5. Plan and schedule the site visit.

C. The Contracting Officer or designee shall inform all pre-proposal conference attendees of the following:

1. That remarks and explanations at the conference do not qualify or amend the terms of the solicitation; and
2. That the terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

**8.6 Amendment Of Solicitations Before Closing Date**

- A. After issuance of a solicitation, but before the date set for receipt of proposals, the Contracting Officer may make changes in the solicitation to reflect the following:
  - 1. Significant changes in quantity, specification, or delivery schedules;
  - 2. The correction of defects or ambiguities;
  - 3. Any change in the closing date for receipt of proposals; or
  - 4. Any other appropriate purpose affecting the procurement.
- B. The Contracting Officer shall determine if the closing date needs to be changed when amending a solicitation.
- C. If the time available before closing is insufficient, the Contracting Officer shall notify prospective offerors by facsimile or telephone of the extension of the closing date and shall, by written amendment to the solicitation, confirm the extension of the closing date.
- D. The Contracting Officer shall not award a contract unless any amendments made to the RFP have been issued in sufficient time to be considered by prospective offerors.

**8.7 Receipt Of Proposals**

- A. The procedure for receipt and handling of proposals in negotiated acquisitions should be similar to the receipt and safeguarding of bids in sealed bidding. Proposals and quotations shall be marked with the date and time of receipt.
- B. After receipt, proposals and quotations shall be safeguarded from unauthorized disclosure.

**8.8 Late Proposals, Late Modifications, And Late Withdrawals**

- A. Offerors shall submit offers, and any modifications, so that they will reach the office designated in the solicitation on time.
- B. Proposals and modifications to proposals that are received in the designated office after the exact time specified in the RFP are "late". A late modification of a successful proposal, which makes its terms more favorable to the MTA, shall be considered at any time it is received and may be accepted. The Contracting Officer may extend the closing date for the submission of proposals when a late proposal is received and it appears to be in the best interest of the MTA to consider it.
- C. A late proposal or late proposal modification that is not considered shall be held unopened, unless opened for identification, and shall be immediately returned to Offeror.
- D. The following information shall, if available, be included in the contract files with respect to each late offer, late modification, or late withdrawal of offer:
  - 1. A statement of the date and hour of mailing, filing, or delivery and date and hour of receipt;
  - 2. A written determination, with supporting facts, why the late offer or modification was or was not considered for award;

**8.9 Disclosure And Use Of Information Before Award**

- A. After receipt of proposals, the information contained in them and the number or identity of offerors shall not be made available to the public or to anyone in the MTA not required to have access to the information in the performance of his or her duties.
- B. During the pre-award period of a competitive-proposal procurement, only the Contracting Officer and others specifically authorized may transmit technical or other information and conduct discussions with prospective contractors.
- C. A Contracting Officer may release proposals outside the MTA for evaluation, consistent with the following requirements:
  - 1. A written agreement shall be obtained from the outside evaluator that the information contained in the proposal will be used only for evaluation purposes and will not be further disclosed;
  - 2. Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the MTA shall be affixed to any reproduction or abstracted information made by the evaluator
  - 3. Proposals will not be released to a person or organization that has or may have a current or prospective business interest.

**8.10 Responsibilities**

- A. Personnel engaged in the evaluation process shall not discuss or reveal information concerning the evaluations except to those individuals participating in the same proceedings and only to the extent that information is required in connection with such proceedings. Divulging information during the evaluation, selection, and negotiation phases to offerors or to personnel not having a need to know could jeopardize the resultant award. The Contracting Officer must instruct personnel participating in the evaluation process to observe these restrictions and ensure that all personnel understand that no matter how innocent, unauthorized disclosure of information could compromise the procurement process and furthermore is prohibited.
- B. The Project Manager:
  - 1. Approves the Source Selection Plan before solicitation release; and
  - 2. Is responsible for the technical requirements related to the source selection process.
- C. The Source Selection Authority/Committee (SSA)/(SSC) is established by the Project Manager, and is:
  - 1. Tailored for the particular acquisition, that includes appropriate contracting, legal, small business diversity, technical, cost/price analysis, and other expertise to ensure a comprehensive evaluation of offers. The SSC/SSA are responsible for:
    - a. Ensuring that proposals are evaluated based solely on the factors and subfactors contained in the source selection plan and the solicitation;
    - b. Considering the recommendations of advisory boards or panels (if any); and





- c. Selecting the source or sources whose proposal is the best value to the MTA.
- D. The Contracting Officer shall:
1. Before and after release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;
  2. After receipt of proposals, control exchanges with offerors;
  3. Conduct the source selection process to assure compliance with the provisions of this Manual; and
  4. Award the contract(s). However, the Contracting Officer's selection decision is subject to the approval of the MTA Board of Directors and FTA, when required.

### **8.11 Proposal Evaluation**

- A. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract or task orders successfully. The MTA's SSC and functional departments shall promptly evaluate all competitive proposals after their receipt by the MTA and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods. The relative strengths, deficiencies, significant weaknesses, and performance risks supporting each proposal evaluation shall be documented in the contract file. The proposal evaluation process shall not average or otherwise manipulate individual evaluator scores to produce a single raw score for any factor or subfactor. The selection committee shall establish rating scores for non-price/cost factors by evaluator consensus and not by vote.
1. Cost or price evaluation. See Chapter 15.
  2. Past performance evaluation.
    - a. Past performance information is one indicator of an offeror's capability to perform the contract successfully. If past performance is used as an evaluation factor, the currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered.
    - b. The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors and subcontractors performing major or critical aspects of the requirement an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the MTA requirement.
- B. In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.
1. The evaluation should include the past performance of offerors in complying with subcontracting plan goals for disadvantaged business enterprises (DBE) firms and the monetary targets for DBE participation.



- C. Non-Price or Non-Cost Factor(s) Evaluation. When non-price or non-cost evaluation factors are included in the RFP, the source selection records shall include:
  - 1. An assessment of each offeror's ability to accomplish these requirements; and
  - 2. A summary, matrix, or quantitative ranking, along with an appropriate supporting narrative, of each proposal using the evaluation factors.
- D. Technical Analysis. The Contracting Officer shall determine the need for a technical evaluation based on the type of procurement. If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the Contracting Officer shall seek the assistance of the appropriate technical official and include the technical analysis in the file. The technical findings shall be incorporated in the Pre-Negotiation objectives.
- E. If a technical evaluation is done, a technical evaluation report shall be prepared by the responsible MTA official and shall contain the following:
  - 1. The basis for evaluation;
  - 2. An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
  - 3. A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
  - 4. A summary of findings.
- F. Subcontracting Evaluation. Solicitations may be structured to give offers from disadvantaged business enterprises the highest rating for the evaluation factors.

### **8.12 Changes In MTA Requirements**

- A. When, either before or after receipt of proposals, the MTA increases, decreases, or otherwise changes its requirements, the Contracting Officer shall issue a written amendment to the solicitation.
- B. In deciding which firms to notify of a change, the Contracting Officer shall consider the stage in the procurement cycle at which the change occurs and the magnitude of the change, as follows:
  - 1. If proposals are not yet due, the amendment shall be sent to all firms that received a solicitation;
  - 2. If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment shall be sent only to the responding offerors; and
  - 3. If the competitive range has been established, the amendment shall be sent only to those offerors within the competitive range.
- C. If a change is so substantial that it warrants complete revision of a solicitation, the Contracting Officer shall cancel the original solicitation and issue a new one, regardless of the stage of the procurement. The new solicitation shall be issued to all firms originally



solicited and to any firms added to the original list, and shall be publicized in accordance with the requirements of Chapter 4 (4.3).

- D. If the proposal considered to be most advantageous to the MTA (as determined by using the established evaluation criteria) involves a departure from the stated requirements, the Contracting Officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements, if this can be done without revealing to other offerors the solution proposed in the original departure or any other information that is entitled to protection.

### **8.13 Disclosure Of Mistakes Before Award And Canceling RFP'S**

- A. The Contracting Officer shall examine all proposals before award for minor informalities or irregularities and apparent clerical mistakes.
- B. Communication with offerors to resolve apparent minor mistakes or irregularities shall be only for clarification, not discussion. However, if the resulting communication prejudices the interest of other offerors, the Contracting Officer shall not make award without discussions with all offerors within the competitive range.
- C. A Contracting Officer may reject all proposals received that are determined not be in the competitive range including those proposals made by offerors who refuse to execute all required representations and certifications if it is in the best interest of the MTA.
- D. When all proposals are rejected and no award will be made as a result of the RFP, the Contracting Officer shall cancel the RFP.

### **8.14 Competitive Range**

- A. The Contracting Officer shall determine which proposals are in the competitive range and can continue with the proposal evaluation process. There is no requirement to set a competitive range during a procurement. Award can be made based on the initial offer and discussion with the offerors.
- B. The competitive range shall be determined on the basis the factors stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award.
- C. The Contracting Officer shall ensure that, if discussions are held with any offeror within the competitive range, discussions are held with all offerors in the competitive range.
- D. The content and extent of the discussions is a matter of the Contracting Officers' judgment, based on the particular facts of each procurement. During discussion with offerors, the Contracting Officer or the authorized representative shall do the following:
  - 1. Control all discussions;
  - 2. Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the MTA's requirements;
  - 3. Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal. However, the Contracting Officer should not assist an offeror to bring its proposal up to the level of other proposals through successive rounds



- of discussion, such as pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal.
4. Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and
  5. Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.
  6. Not disclose technical information pertaining to a proposal that results in improvement of a competing proposal.
  7. Not indicate to an offeror a cost or price it must meet to obtain further consideration, advise an offeror of its standing relative to another offeror, or otherwise furnish information about any other offeror's prices.

### **8.15 Best And Final Offers**

- A. Upon completion of discussions, the Contracting Officer may ask all offerors within the competitive range to submit their best and final offer. Oral requests for best and final offers shall be confirmed in writing.
- B. The request for best and final offers shall include the following:
  1. Notice that discussions are concluded;
  2. Notice that this is the opportunity to submit a best and final offer;
  3. A common cut-off date and time that allows a reasonable opportunity for submission of written best and final offers; and
  4. Notice that if any modification of the offerors proposal is required at the conclusion of discussions, it must be received by the date and time specified and is subject to the provisions of this Chapter covering late proposals.
- C. After receipt of best and final offers, the Contracting Officer shall not reopen discussions unless it is clearly in the best interests of the MTA to do so.
- D. If discussions are reopened, the Contracting Officer shall issue an additional request for best and final offers to all the offerors within the competitive range.
- E. After evaluation of the best and final offers, the Contracting Officer/Source Selection Committee shall select that responsible offeror whose best and final offer is most advantageous to the MTA, considering only the factors included in the solicitation.
- F. The Contracting Officer or designee shall prepare supporting documentation for the selection decision that shows the relative differences among the proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis for the selection. (See Section 8.18)

**8.16 Price Negotiation**

- A. Prime contractors and subcontractors are required to submit and certify cost or pricing data under certain circumstances. The circumstances for requiring submission and certification of cost and pricing data is set forth in the Chapter 15, Cost and Price Analysis.
- B. It is MTA policy that Contracting Officers shall:
  - 1. Purchase supplies and services from responsible sources at fair and reasonable prices;
  - 2. Price each contract separately and independently and not (1) use proposed price reductions under other contracts as an evaluation factor or (2) consider losses or profits realized or anticipated under other contracts; and
  - 3. Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.
- C. Price negotiation is intended to permit the Contracting Officer and the offeror to agree on a fair and reasonable price. Compromises during negotiations, which involve safety, shall be in accordance with the MTA System Safety program. The Contracting Officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the Contracting Officer should include comments in the price negotiation memorandum when significant audit or other specialist recommendations are not adopted.
- D. The Contracting Officer's primary concern is the price the MTA actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. The Contracting Officer's objective is to negotiate a contract with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract price should be considered together with the issues of risk and uncertainty to the contractor and the MTA. If, however, the contractor insists on a price or demands a profit or fee that the Contracting Officer considers unreasonable and the Contracting Officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the Contracting Officer shall then refer the contract action to higher authority. Disposition of the action by higher authority is to be documented.

**8.17 Contract File Documentation**

- A. Per FTA 4220.1F Chapter III, Subsection 3.d.(1) Written Record of Procurement History requires the following be documented in the file:
  - 1. Rationale for the method of procurement (see Chapter 4)
  - 2. Selection of Contract Type (see Chapter 4)
  - 3. Reasons for Contractor selection or rejection, and
  - 4. The basis for the contract price

**8.17.1 Pre-Negotiation Objectives**



- A. The Contracting Officer shall establish pre-negotiation objectives before the negotiation of any contract, which will be negotiated. The pre-negotiation objective memo should be used to obtain approval prior to negotiations when the offer exceeds the Contracting Officer's delegated authority and included in the contract file. A summary of the contractor's proposals should be included in the pre-negotiation objective
- B. When cost analysis is required, the Contracting Officer shall address the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective. If cost analysis is required, the pre-negotiation objective should address the amount of each major cost element:
  - 1. Proposed by the contractor;
  - 2. Recommended by other pricing assistance reports (if any);
  - 3. Contained in the MTA's negotiation objective; and
- C. The Contracting Officer shall develop pre-negotiation objectives to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee.
- D. In determining the pre-negotiation objectives, the Contracting Officer shall analyze the offeror's proposal and consider technical analysis and other pertinent data, such as MTA cost estimates, price histories, and audit findings. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. The most significant facts or considerations controlling the establishment of the pre-negotiation position and the basis for determining the profit or fee should be included in the pre-negotiation objective memo.

#### **8.17.2 Summary Negotiation Memorandum**

- A. At the conclusion of each negotiation, the Contracting Officer shall promptly prepare a memorandum of the principal elements of the negotiations.
- B. The summary of negotiations memorandum shall be included in the contract file and should contain the following:
  - 1. The name, position, and organization of each person representing the contractor and the MTA in the negotiation;
  - 2. Where Certified Cost or Pricing data is required (See 15.13), the extent to which the negotiation team did the following:
    - a. Relied on the cost or pricing data submitted and used by them in negotiating the price when certified cost or pricing data are required; and
    - b. (ii) Recognized as inaccurate, incomplete, or non-current, any cost or pricing data submitted; the action taken by the negotiation team and the contractor as a result; and the effect of the defective data on the price negotiated.
  - 3. The most significant facts or considerations controlling the establishment of the negotiated price including an explanation of any significant differences between the pre-negotiation objective and the negotiated price;
  - 4. For cost reimbursable contracts the profit or fee negotiated.

**8.18 Notification And Debriefing**

- A. The Contracting Officer, after obtaining all required approvals, shall award a contract with a reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror.
1. Pre-award notices of exclusion from competitive range. The Contracting Officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered. Per March 2000 Board adopted policy, notify each unsuccessful proposer by fax or e-mail.
  2. After the date of MTA staff recommendation for award, the Contracting Officer shall provide written notification by fax or e-mail (per March 2000 Board adopted policy) to each offeror. The notice shall include:
    - a. The name and address of each offeror receiving an award;
    - b. The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and
    - c. In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (2)(b) of this Section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.
  3. Upon request, the Contracting Officer may provide the information in paragraph (A)(2) of this section to unsuccessful offerors that received a pre-award notice of exclusion from the competitive range.
  4. Debriefings
    - a. Pre-award debriefing shall be conducted when requested, unless Contracting Officer documents why it is in MTA's best interest not to do so.
    - b. If a contract is awarded on a basis other than price alone, the Contracting Officer shall provide a debriefing for any unsuccessful offeror that submits a written request for debriefing, unless the Chief Executive Officer determines that to do so is not in the best interests of the MTA.
    - c. If a debriefing is held, debriefing information shall include the MTA's evaluation of the significant weak or deficient factors in the proposal. However, point-by-point comparisons with other offerors' proposals shall not be made.
    - d. Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring.

**8.19 Contract Review Prior To Award**

- A. Subject to Board approval, when applicable, the Contracting Officer shall proceed with award to the firm(s) whose proposal(s) will be most advantageous to the MTA. The draft contract may be submitted to the Office of County Counsel for review and approval as to form.
- B. The Contracting Officer is responsible for making all changes, as may be required based on legal, technical and management review.

**8.20 Contract Approval And Award**

- A. Upon completion of all negotiations, the following actions will be taken:
  - 1. The Contracting Officer sends copies of the final contract draft to the contractor for signature and requests all MTA required documents
  - 2. The Contracting Officer will then prepare and coordinate the MTA document requesting execution approval for submission to the authorizing Official, based on delegated signature authority levels.
  - 3. After the contract is approved, and the MTA obtains the contractor's insurance certificates and copies of the executed contract from the contractor, the Contracting Officer will proceed with obtaining the MTA's execution of the contract.
  - 4. After execution of the contract, when necessary the Contracting Officer shall prepare a "Notice to Proceed" letter. The Contracting Officer shall transmit a fully executed original copy of the contract to the contractor. Conformed copies shall be sent to the project manager for use in the administration of the contract.

**8.21 Exceptions To Procurements Required To Be Bid Under PUC 130232**

Materials, equipment and supplies normally are required to be bid under PUC 130232, however they can be competitively negotiated under several different laws as follows:

**8.21.1 PUC 130238 Competitive Negotiation For Specialized Equipment**

- A. Exceptions to competitive requirements in this Chapter for this type of procurement as required by PUC 130238 are as follows:
  - 1. Requires 2/3 finding by Board that a particular procurement qualifies under this law and directs that the procurement be conducted through competitive negotiation. The Board approval is required prior to release of RFP.
  - 2. Advertisement is required twice in a newspaper of general circulation at least 10 days before the date for receipt of proposals.
  - 3. If only one proposal is received, the Board is required to make a finding that only a single response was received prior to proceeding to negotiate with the offeror.
  - 4. If award is not made to the offeror whose proposal contains the lowest price, the commission shall make a finding setting forth the basis for the award.





5. Provisions in any contract concerning women and minority business enterprises, which provisions are in accordance with the request for proposal, shall not be subject to negotiation with the successful offeror.

**8.21.2 Public Contract Code 20217 Purchases Contracts For Technology**

- A. Exceptions to competitive requirements in this Chapter for this type of procurement as required by 20217 are as follows:
  1. Requires 2/3 finding by Board that a particular procurement qualifies under this law and directs that the procurement be conducted through competitive negotiation.
  2. Advertisement is required once in a newspaper of general circulation at least 10 days before the date for receipt of proposals.
  3. If award is not made to the offeror whose proposal contains the lowest price, the MTA shall make a finding setting forth the basis for the award.
  4. Provisions in any contract concerning women and minority business enterprises, which provisions are in accordance with the request for proposal, shall not be subject to negotiation with the successful offeror.

**8.21.3 Public Contract Code 20231.5 Purchase Of Technology Equipment**

- A. Exceptions to competitive requirements in this Chapter for this type of procurement as required by Public Contract Code 20231.5 are as follows:
  1. Requires 2/3 finding by Board that a particular procurement qualifies under this law and directs that the procurement be conducted through competitive negotiation. The Board approval is required prior to release of RFP.
  2. Advertisement is required twice in a newspaper of general circulation at least 10 days before the date for receipt of proposals.
  3. If only one proposal is received, the Board is required to make a finding that only a single response was received prior to proceeding to negotiate with the offeror.
  4. If award is not made to the offeror whose proposal contains the lowest price, the commission shall make a finding setting forth the basis for the award.
  5. Provisions in any contract concerning women and minority business enterprises, which provisions are in accordance with the request for proposal, shall not be subject to negotiation with the successful offeror.



## **9.0 Purpose And Scope**

- A. This Chapter prescribes guidelines and requirements for the procurement of Architect-Engineer (A/E) and related services.
- B. Architect-Engineer Services are defined as professional services of an architecture or real property engineering nature associated with research development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a California registered or licensed architect or engineer. Types of services include program management, construction project management, feasibility studies, preliminary engineering, design, surveying, mapping, private architectural, landscape architectural, environmental, and land surveying.
- C. This Chapter details requirements in addition to the general requirements for negotiated procurements in Chapter 8.

## **9.1 Architect-Engineer Policy**

- A. The MTA will publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors. (See California Government Code §4525, et seq.). Sources for architect-engineer contracts shall be selected in accordance with the procedures set forth below.
- B. The MTA shall use qualifications-based competitive procedures for procurement of architectural and related services. Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected, consistent with the minimum needs of the MTA, followed by a request for a price from the selectee and negotiation based upon the selectee's price proposal for a fair and reasonable compensation. This method, where competitive prices are not obtained, can only be used in procurement of architect-engineer services. This method of procurement cannot be used to obtain other types of services even though firms that provide the above types of services may also be potential sources to provide other services.

## **9.2 Evaluation Of Firms For Architect-Engineer Contracts**

The MTA shall select firms for Architect-Engineer contracts on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Price shall not be an evaluation factor.

## **9.3 Negotiation**

Price negotiations for A/E contracts are conducted in accordance with Sections 8.2.2 and 8.16 in Chapter 8, Price Negotiations.

## **9.4 Consultant Selection For Federally Funded Projects**

- A. For federally funded A-E contracts:
  - 1. An offeror's qualifications shall be evaluated;



2. Price shall be excluded as an evaluation factor;
3. Negotiations will be conducted with only the most qualified offeror; and
4. Failing agreement on price, negotiations with the next most qualified offeror will be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the MTA.

**9.5 Consultant Selection For CalTrans Funded Projects**

For projects funded by CalTrans, the selection process shall be in accordance with Chapter 10 of the CalTrans' Local Assistance Procedures Manual.

[http://www.dot.ca.gov/hq/LocalPrograms/lam/prog\\_p/p10consult.pdf](http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p10consult.pdf)

**9.6 Design-Build Contracts**

Public Contract Code § 20209.5 authorizes transit operators to enter into a design-build contract, as defined, according to specified procedures. These are complex procedures requiring careful analysis and reviews as to their applicability and specific procedures to be followed.

Procurement staff shall consult with County Counsel prior to undertaking any procurement under this process.

**10.0 Purpose And Scope**

- A. This Chapter sets forth the procedures for small purchases and other simplified purchase procedures. Pursuant to PUC 130232, the procurement of supplies, materials and equipment, the estimated aggregate amount of which does not exceed \$40,000, and for Construction when the total does not exceed an aggregate amount of \$25,000 shall be purchased by utilizing Small Purchases Procedures. Services and miscellaneous procurements that do not exceed an aggregate amount of the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) currently set at \$100,000 as of February 2003 may be procured by the use of Small Purchase Procedures or other simplified methods. Micro-Purchase procedures are also discussed in the section. The micro-purchases threshold is procurements that do not exceed \$2,500.
- B. These purchases shall be made competitively except where it is clearly in the best interests of the MTA to accomplish such purchases non-competitively.
- C. This Chapter describes the procedures for using a blanket purchase order (BPO), Procurement Purchase Card and a purchase order as well as other small purchases. Procedures for the modification or cancellation of purchase orders are also prescribed.

**10.1 Use Of Small Purchase Procedures**

- A. The small purchase procedures set forth in this Chapter may only be used for the procurement of supplies, services, construction, and other items when the total amount of the procurement does not exceed the Small or Micro Purchases Threshold.
- B. A Contracting Officer shall not use small purchase procedures when the requirement can be met by using a requirements contract, an indefinite quantity contract, a federal supply schedule, or other required source of supply.
- C. A Contracting Officer shall not split a procurement totaling more than the MTA's small purchase limitation into several purchases that are less than the limit in order to permit the use of the small purchase procedures.
- D. A procurement requirement shall not be parceled, split, divided, or purchased over a period of time in order to avoid the dollar limitations for use of small purchase procedures.
- E. A Contracting Officer shall use the small purchase procedures that are most suitable, efficient, and economical based on the circumstances of each procurement.

**10.2 Small Purchase Authority**

The small purchase contracting authority of MTA personnel shall be specific delegations issued to named individuals or positions within the MTA.

**10.3 Types Of And Requirements For Micro Purchases Subject To PUC 130232 And FTA 4220.1F, Chapter VI, Subsection 3.a.**

A procurement for an amount not to exceed two thousand, five hundred dollars \$2,500 may be accomplished by securing one quotation if the price is considered to be fair and reasonable. These purchases are exempt from Buy America requirements. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. The only file documentation required is a determination that the price is fair and reasonable and how the determination was made.

**10.4 Purchase Card Program**

- A. This Section applies to purchases of supplies or equipment at or below the micro-purchase threshold with the use of a purchase card.
- B. The Procurement Office will maintain an Agency wide Purchase Card Program in order to allow the MTA to establish a more efficient, cost-effective method of purchasing and payment for small dollar transactions. Departments are encouraged to participate in this Program to procure and pay for micro-purchases in accordance with MTA procedures. This is not intended to limit use of the purchase card to micro-purchases, if otherwise authorized under MTA procedures.
- C. Consistent with the requirements of Chapter 2 of this Manual with respect to the re-delegation of procurement authority, the Procurement Department may re-delegate micro-purchase authority to qualified MTA employees who will be using the supplies or services being purchased. MTA employees delegated this authority are contracting officers within the meaning of Chapter 10, Section 10.2 of this Manual and subject to the MTA's Code of Conduct.
- D. Only such MTA employees receiving this re-delegated procurement authority may participate in the MTA wide purchase card program. The Procurement Department will be responsible for developing and maintaining the Purchase Card User's manual, training employees selected to receive a Purchase Card and maintaining a list of all MTA employees who exercise such authority.
- E. Micro-purchases, when possible or appropriate should be distributed by contracting officers equitably among qualified suppliers or merchants.
- F. Requirements aggregating more than the micro-purchase threshold shall not be split into several purchases that are less than the threshold merely to permit purchase under this subchapter. Contracting authority may be revoked if this direction is violated. Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer determines that the price is reasonable. Prompt payment discounts should be solicited, if appropriate.
- G. The administrative cost of verifying the reasonableness of the price for purchases at or below the micro-purchase threshold may more than offset potential savings from detecting instances of overpricing. Therefore, actions to verify price reasonableness such as soliciting additional quotations need only be taken if:



1. The contracting officer suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or
  2. Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).
- H. The Procurement Office shall conduct periodic reviews and evaluations of sponsoring department's purchase card activity for determining compliance with the MTA's procurement guidelines and other business practices as appropriate. This review will also evaluate the purchasing activities of individuals exercising this redelegated purchasing authority.

### **10.5 Service Agreements And Miscellaneous Procurements**

Small Procurements of two thousand five hundred dollars (\$2,500) and greater must be evaluated by obtaining written or oral proposals/quotations. Price or rate quotations shall be obtained from an adequate number of qualified sources.

### **10.6 Construction Contracts**

Per PUC 130232(f), for requisitions that have a total estimated value exceeding twenty five hundred dollars (\$2,500) but not more than twenty-five thousand dollars (\$25,000), a minimum of three (3) written or oral quotations are to be obtained that permit prices and terms to be compared.

### **10.7 Purchase Contracts, For Equipment, Supplies And Materials**

Per PUC 130232(f), purchases in excess of twenty five hundred dollars (\$2,500) and less than forty thousand dollars (\$40,000) shall be competed by obtaining three written or oral quotations that permit prices and terms to be compared.

### **10.8 Purchase Contracts, Construction, And Professional Services Or Miscellaneous Procurements Exceeding The Small Purchases Threshold**

Purchases in excess of twenty-five thousand dollars (\$25,000) for Construction and forty thousand dollars (\$40,000) for equipment, supplies and material and over the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) for all other items (currently set at \$100,000 as of February 2003), require the use of competitive procedures outlined in other Chapters in this Manual.

### **10.9 Non-Competitive Small Purchases**

- A. Non-competitive small purchases shall be distributed equitably among suppliers. When practical, quotations shall be solicited from vendors in addition to the previous supplier before placing a repeat order.
- B. The Contracting Officer shall take action to verify price reasonableness in the following instances:



1. When the Contracting Officer suspects or has information (such as comparison to previous prices paid or personal knowledge of the item involved) to indicate that the price may not be reasonable; or
2. When purchasing an item for which no comparable pricing information is readily available (such as an item that is not the same as, or is not similar to, other items that have been recently purchased on a competitive basis).

#### **10.10 Small Purchases Competitive Factors**

- A. If the Contracting Officer determines that the best interests of the MTA (or other factors set forth below) indicate that quotations should be obtained from more than three sources, the Contracting Officer may require the solicitation of additional quotations.
- B. The Contracting Officer shall consider the following factors when deciding how many quotations will be solicited:
  1. The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
  2. Information obtained in making recent purchases of the same or similar item;
  3. The urgency of the proposed purchase;
  4. The dollar value of the proposed purchase; and
  5. Past experience concerning specific contractors' prices.
- C. A Contracting Officer shall maximize competition for small purchases and shall not limit solicitations to suppliers of well known and widely distributed makes or brands, or solicit on a personal preference basis. Efforts shall be made to include DBE's and M/WBE's whenever possible.
- D. The Contracting Officer shall have available a small purchase source list. The list should indicate whether the business is a certified Disadvantaged Business Enterprise.

#### **10.11 Determination Of Reasonableness Of Price And Award For Competitive Small Purchases**

- A. The Contracting Officer shall determine, in writing that the price to be paid to the successful offeror is fair and reasonable.
- B. When only one (1) response is received to a request for quotations, or the price variance between multiple responses reflects a lack of adequate competition, the Contracting Officer shall include a statement in the contract file giving the basis for the determination that the price is fair and reasonable.
- C. The determination that a proposed price is fair and reasonable may be based on either of the following:
  1. Competitive quotations; or
  2. Comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items, value analysis, the Contracting



Officer's personal knowledge of the item being purchased, or any other reasonable basis such as direct labor and overhead rates found reasonable on recent pricing actions.

- D. The Contracting Officer shall establish and maintain informal records of oral price quotations and include the record in the purchase file. The informal records shall consist of the names of the suppliers contacted and the prices and other terms and conditions quoted by each.
- E. The Contracting Officer may limit written records of solicitations to notes or abstracts to show prices, delivery, references to printed price lists used, the vendor or vendor's contacted, and other pertinent data.
- F. Records supporting small purchases shall be retained in accordance with MTA procedures.
- G. The Contracting Officer need notify unsuccessful suppliers only if requested.
- H. When adequate competition is lacking and for sole source small purchases, a cost analysis may be necessary to determine reasonableness (See Chapter 15, Cost and Price Analysis).

#### **10.11.1 Written Record Of Procurement History For Purchases Above The Micro-Purchase Threshold**

- A. FTA 4220.1F Chapter III, Subsection 3.d.(1) , Written Record of Procurement History requires the following be documented in the file for all actions above the micro-purchase threshold:
  - 1. Rationale for the method of procurement (See Chapter 4)
  - 2. Selection of Contract Type (See Chapter 4)
  - 3. Reasons for Contractor selection or rejection, and
  - 4. The basis for the contract price

#### **10.12 Blanket Purchase Orders**

- A. A blanket purchase order (BPO) may be used, in accordance with the provisions of this Chapter, as a simplified method of filling anticipated repetitive needs for supplies, services, public works, or other items.
- B. The intent of BPO's is to reduce administrative costs associated with purchases of small value items or services and shall not be used to circumvent requirements for competitive bidding or negotiated contracting.
- C. A Contracting Officer may establish a BPO if one or more of the following criteria apply:
  - 1. There is a wide variety of items in a broad class of goods that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably;
  - 2. There is a need to provide commercial sources of supply for one or more offices in the MTA that does not otherwise have or need direct authority to purchase; or
  - 3. The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure.





- D. A BPO shall not be used for any commodity, service, or other item for which a requirements type contract has been issued by the MTA.
- E. To the extent practicable, BPO's for items of the same type shall be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or other items under a BPO.
- F. BPO's shall be made with firms from which numerous individual purchases will likely be made in a given period.
- G. A BPO shall be limited to furnishing individual items or commodity groups or services that the source of supply is in a position furnish, except as provided otherwise under this section.
- H. The Contracting Officer shall not use a BPO to authorize purchases that are not otherwise authorized by law or this Manual and shall not purchase off a BPO to avoid the small purchase authority limitations.
- I. The existence of a BPO shall not justify procurement on a sole source basis.
- J. When there is an insufficient number of vendors with BPO's to ensure maximum competition for a particular purchase, the contracting office shall do the following:
  - 1. Solicit quotations from other sources and make the purchase as appropriate; and;
  - 2. Establish additional BPO's to facilitate future purchases when recurring requirements for the same or similar items or services seem likely, when qualified sources are willing to accept a BPO, or when it is otherwise practical to do so.
- K. A BPO shall not be issued for a period of more than one (1) year.

### **10.13 Blanket Purchase Procedures**

- A. The BPO will be issued on the standard MTA purchase order form, or other MTA forms as appropriate, and shall incorporate the following supplementary terms and conditions:
  - 1. A statement that the supplier will furnish supplies or services, described in general terms, if and when requested by the Contracting Officer during a specified period of time and within a stipulated total amount.
  - 2. A statement that the MTA is obligated only to the extent that authorized purchases are actually made under the BPO.
  - 3. A statement that the prices to the MTA shall be as low or lower than those charged to the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment; and
  - 4. A statement that specifies the dollar limitation for purchases under the BPO (not to exceed the maximum order limitation).
- B. The Contracting Officer shall furnish to each supplier a list of names of individuals authorized to purchase under the BPO, identified by organizational component, and the dollar limitation per purchase for each individual.



- C. Each BPO shall contain a requirement that all deliveries or shipments under the agreement (except subscriptions and other charges for newspapers, magazines, or other periodicals) shall be accompanied by delivery tickets or sales slips which contain the following minimum information:
  - 1. The name of the supplier;
  - 2. The BPO and release number;
  - 3. The date of purchase;
  - 4. An itemized list of supplies or services furnished;
  - 5. The quantity, unit price, and extension of each item, less applicable discounts; and;
  - 6. The date of delivery or shipment.
- D. Each BPO shall require that one of the following procedures be followed:
  - 1. That a vendor submit to the Contracting Officer a summary invoice at least monthly or upon expiration of the BPO, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets; or
  - 2. That the vendor submits to the Contracting Officer an itemized invoice at least monthly or upon expiration of the BPO, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Copies of delivery tickets need not support these invoices.
- E. Each order placed against a BPO shall be recorded on a BPO order form (approved by the Executive Officer), which shall include a discreet BPO order number, accounting data identifying the source of funds the items or services ordered, the name of the person placing the order, the date of the order, and other information required by the Executive Officer.
- F. Purchases against a BPO may be made orally; provided, that each order shall be documented on a BPO order form. After making an oral purchase, the Contracting Officer may send a copy of the BPO order form to the contractor to ensure that the contractor and the Contracting Officer agree concerning the transaction.
- G. The Contracting Officer executing the BPO shall do the following:
  - 3. Maintain adequate records to ensure that the total dollar volume of orders does not exceed the stated total aggregate amount;
  - 4. Ensure that only authorized individuals are placing purchases against a BPO; and;
  - 5. Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant new arrangements with different suppliers or the modification of existing arrangements.

**10.14 Review And Close-Out Of BPO'S**

- A. The individual BPO is considered complete when the purchases under it equal its total dollar limitation, or when its stated time period expires.



- B. A sampling of BPO's will be reviewed by Procurement, with the assistance of the User department, on an annual basis to determine whether items purchased hereunder should be subject to competitive bidding requirements.

### **10.15 Purchase Contracts**

- A. Pursuant to MTA policy, unless otherwise approved by the Executive Officer, Procurement, requirements authorized up to twenty four thousand dollars (\$24,000) may be issued on BPO's to more than one supplier provided that no one transaction exceeds one thousand dollars (\$1,000).
- B. Such BPO's can only be increased by modification to a maximum of forty thousand dollars (\$40,000).

#### **10.15.1 Public Works**

Unless otherwise approved by the Executive Officer, Procurement, no individual BPO transaction may exceed one thousand dollars (\$1,000).

#### **10.15.2 Service Agreements And Miscellaneous Procurement Contracts**

No BPO for services or miscellaneous procurements shall exceed forty thousand dollars (\$40,000) in the aggregate.

### **10.16 User Department Responsibilities**

- A. The User department is responsible for the following:
  - 1. Identification of the need for a BPO by initiating a request for purchase form and, if appropriate, a completed justification form;
  - 2. Identify, in broad terms, the type of requirement (i.e., miscellaneous electrical parts) which are to be purchased under the BPO;
  - 3. Basis for suggested BPO vendor;
  - 4. Any quotations, price lists or other pricing documents which support price reasonableness;
  - 5. Requesting releases of the items required from the vendor;
  - 6. Submission of a copy of the release to the Contracting Officer;
  - 7. Submission of a copy of the release to the location Stores Clerk for verification of receipt and signature;
  - 8. Monitoring of dollar amounts expended against a BPO to avoid over-run of the purchase order value and the requirements of this Manual;
  - 9. Receiving invoices from vendor;
  - 10. Authorization of head of User department or designee indicating approval of payment; and
  - 11. Forwarding approved invoice to the Accounting Department.



**10.17 Purchase Orders**

- A. Each purchase order shall be issued on a form prescribed by the Executive Officer, Procurement.
- B. Except as provided below, a Contracting Officer shall issue a purchase order on a fixed-price basis.
- C. Each purchase order shall include any trade and prompt payment discounts that are offered.
- D. Each purchase order shall specify the quantity of supplies or services ordered.
- E. When applicable, a purchase order shall provide that inspection and acceptance will be at destination. When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to the point of receipt. The designated MTA officials immediately upon receipt and acceptance of materials shall complete receiving reports.
- F. Each purchase order shall contain a definite calendar date by which delivery of supplies or performance of services is required.
- G. Distribution of copies of purchase orders shall be limited to those required for essential administration and transmission of contractual information.
- H. If the Contracting Officer wants to consummate a binding contract between the parties before the contractor undertakes performance, the Contracting Officer shall require written acceptance of the purchase order by the contractor.

**10.18 Unpriced Purchase Orders**

- A. A Contracting Officer shall use an unpriced purchase order under the following circumstances:
  - 1. When the transaction will not exceed the agency's small purchase limits;
  - 2. When it is impractical to obtain pricing in advance of issuance of the purchase order; and
  - 3. When the purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs, material available from only one source and for which cost cannot be readily established, or supplies or services for which prices are known to be competitive but exact prices are not known.
- B. A Contracting Officer shall issue each unpriced purchase order by using a written purchase order form and shall set a realistic dollar ceiling, either for each line item or for the total order. The dollar limitation shall be an obligation subject to adjustment when the firm price is established.

**10.19 Modification Of Purchase Orders**

- A. A purchase order may be modified by using the modification form approved by the Executive Officer. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.



- B. The Contracting Officer shall obtain a contractor's written acceptance of a purchase order modification if the written acceptance is determined by the Contracting Officer to be necessary to ensure the contractor's compliance with the purchase order as revised.

**10.20 Termination And Cancellation Of Purchase Orders**

- A. If a purchase order that has been accepted in writing by the contractor is to be terminated, the Contracting Officer shall process the termination action in accordance with the provisions found in the Chapter 14, Contract Management and Administration.
- B. If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting office shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed in accordance with the provisions in the sections below.
- C. If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action shall be required and the purchase order shall be considered cancelled.
- D. If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the Contracting Officer shall treat the action as a termination in accordance with the provisions found in the Chapter 14, Contract Management and Administration.

**10.21 Incidental Expenditures**

In order to streamline the single purchase of certain incidental items, which are not generally subject to competitive procedures, excluding professional services related items; departments may utilize the Check Request method of purchasing. These purchases must not exceed one thousand dollars (\$1,000) and must be in the user department's budget. The types of items are: goods and materials; conference/seminar registration fees; subscriptions; books, manuals, and publications; training services; memberships; and professional fees. The check request form must include the department's budget line item approving the purchase.

**11.0 Purpose And Scope**

- A. Procurement of supplies and services, without competition, may be authorized under limited conditions, and subject to written justification documenting the conditions which preclude competition. The need for a non-competitive procurement is recognized when the MTA's interests are best served. However, Contracting Officers are encouraged to avoid continuation of non-competitive contracts.
- B. The conditions and limitations for use of service agreements and emergency procedures are described.
- C. As stated in FTA Circular 4220.1 F Chapter VI, Subsection 3.i., procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals.

**11.1 Exceptions To Competitive Solicitation Requirements Under The California Public Contract Code, Public Utilities Code And Government Code**

- A. Under certain limited circumstances, the law permits exceptions to competitive bidding requirements. These include:
  - 1. Lower price on the open market. If after rejecting bids, the Board determines and declares by a two-thirds vote that in its opinion, supplies, equipment and materials may be purchased at a lower price in the open market, the Board may proceed to direct that the purchase may be made in the open market without further observance of competitive bidding requirements (Public Utilities Code 130233).
  - 2. (Emergencies in case of public exigency. In case of any great public calamity, such as extraordinary fire, flood, storm, epidemic, or other disaster, the Board may, by two-thirds vote, determine that the public interest requires the immediate expenditure of money to safeguard life, health, property or the public welfare and proceed to direct the MTA to enter into a contract needed in such emergency without observance of competitive bidding requirements (and Public Utilities Code 130234).
  - 3. Expenditures for immediate remedial measures. Upon determining that immediate remedial measures are needed to avert or alleviate damage to property or to repair or restore damaged or destroyed MTA property, the Chief Executive Officer may authorize the expenditure of money for the direct purchase of goods and services without following PUC sections 130232, 130233 and 130234 in order to insure that the facilities of the MTA are available to serve the transportation needs of the general public. The Chief Executive Officer shall, after such expenditure, submit to the Board a full report explaining the necessity for the action. (Public Utilities Code 130235).
  - 4. Prototype equipment. The Board, upon two-thirds vote, may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further observance of competitive bidding requirements (Public Utilities Code 130236).



5. Sole Source. The Board may direct the purchase of any supplies, equipment, or material upon a finding by two-thirds vote that there is only a single source of supply and that the purchase is for the sole purpose of duplicating or replacing supplies, equipment, or material already in use without observance of requirements in PUC Section 130232. (Public Utilities Code 130237).
6. Purchase made from or contract made with the State government or any agency or political subdivision thereof or pursuant to any open-end bulk purchase contract of any of them. An order placed under a State Supply Schedule contract does not require a justification provided that when the order is to be placed under a Multiple Award Supply Schedule the procedures set forth in Chapter 11 shall be followed.

### **11.2 Federally Funded Procurement By Noncompetitive Proposals**

- A. Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.
  1. Per FTA 4220.1 F Chapter VI, Subsection 3.i., procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
    - a. The item is available only from a single source;
    - b. (The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - c. FTA authorizes noncompetitive negotiations;
    - d. After solicitation of a number of sources competition is determined inadequate; or
    - e. The item is an associated capital maintenance item as defined in 49 U.S.C. 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The Contracting Officer must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.
  2. A cost analysis, i.e., verifying the proposed cost data, the projections of the data and the evaluation of the specific elements of costs and profit, is required.

### **11.3 General Provisions**

- A. For non-competitive procurements, the Contracting Officer must use the negotiated method of procurement.
- B. In each instance where the non-competitive procurement procedures set forth in this Chapter are used, the Contracting Officer shall do the following:



1. For small purchases see Chapter 10, all non-competitive procurements over the micro-purchase threshold require a written findings justifying the procurement which specifically demonstrates that procurement by competitive bids or competitive negotiation is not required by the provisions of this Manual; and
2. (Ensure that all of the steps required under this Chapter for the justification, documentation, and approval of the procurement are completed before the contract is awarded.

#### **11.4 Non-Competitive Procurement Actions**

- A. The Contracting Officer shall take reasonable steps to avoid using sole source procurement except in circumstances that comply with FTA Circular 4220.1F and applicable California law. The Contracting Officer shall take action whenever possible, to avoid the need to continue to procure the same supply, service, or construction without competition.
- B. If the only justification for using sole source procurement is based on the lack of sufficient time to complete the process of competitive sealed bids or solicitation of competitive proposals, the Contracting Officer shall not award a contract on a sole source basis unless a legitimate emergency, as defined in this Chapter, exists with respect to the need for the supply, service, or construction being procured. Sole source procurement shall not be justified on the basis of any of the following circumstances:
  1. The lack of adequate advance planning for the procurement of the required commodities, services, or other items;
  2. Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
  3. Pending expiration of budget authority.
- C. The Contracting Officer shall ensure that each sole source procurement is reviewed or approved at the level in the MTA at which the funding must be approved.

#### **11.5 Single Available Source**

- A. When determining whether there is only one (1) source for the requirement, the Contracting Officer shall consider whether there is a reasonable basis to conclude that the MTA's minimum needs can only be satisfied by the supplies or services proposed to be procured, and whether the proposed sole source contractor is the only source capable of providing the required supplies or services.
- B. If the reason for making a procurement on a sole source basis is based on the particular source's ownership or control of limited rights in data, patent rights, copyrights, or trade secrets applicable to the required supplies or services, the Contracting Officer shall require that the written findings clearly demonstrate the need for the specific supplies or services, and that one (1) of the following applies:
  1. The requirements cannot be modified to allow procurement by competitive sealed bids or competitive negotiated proposals; or





2. It is in the best interests of the MTA to meet its requirements through procurement of the specific supplies or services and that the proposed contractor is the only source for the specific supply or service.
- C. (Based upon the advice of the User department, the Contracting Officer may determine, subject to approval by the approving authority, that sole source negotiations are justified for the procurement of specific makes and models of technical equipment and parts if all of the following requirements are met:
  1. The specific technical equipment or parts are being procured for standardization purposes, and that standardization of the equipment or parts is in the best interests of the MTA;
  2. The equipment or parts will be used to meet the MTA's requirements for replacement parts or additional units that are compatible with existing MTA equipment;
  3. The existing equipment for which the parts or additional units are being procured was obtained by the MTA through the use of competitive procurement procedures, or was obtained through a separately justified and approved sole source procurement; and
  4. No identical or compatible parts or equipment are available from any other source.
- D. Justification for a sole source procurement shall cover all of the supplies or services being procured under a single contract. The justification of the sole source procurement of some supplies or services shall not be used to avoid competitive procedures for obtaining other commodities or services, which do not qualify for sole source procurement under the same contract.

**11.6 Negotiated Sole Source Findings**

- A. The findings to negotiate a sole source contract, documents the reasons why negotiation is required as a method of procurement, and why a sole source procurement is justified. This document effectively incorporates the findings requirement of Chapter 4, regarding the negotiated method of procurement, with the requirement to justify a sole source procurement as required by this Chapter.
- B. Each sole source contract file shall include the following:
  1. Specific identification of the procurement as sole source;
  2. The nature or description of the proposed procurement;
  3. A description of the requirement, including the estimated value or cost;
  4. A specific citation to the applicable laws and the applicable provision of this Manual that provide legal authority for negotiating the procurement on a sole source basis;
  5. An explanation of the unique nature of the procurement or other factors that qualify the requirement for sole source procurement;
  6. An explanation of the proposed contractor's unique qualifications or other factors that qualify the proposed contractor as a sole source for the procurement;



7. A description of the market survey conducted and the results, or a statement of the reasons why a market survey was not conducted, and a list of the potential sources contacted by the Contracting Officer or which expressed, in writing, an interest in the procurement;
8. Any other pertinent facts or reasons supporting the use of a sole source procurement.

### **11.7 Sole Source Procurement Procedures**

- A. The Contracting Officer shall not be required to publicize a solicitation for a procurement made on a sole source basis.
- B. The Contracting Officer may use a letter to request a proposal for a sole source procurement. The letter request shall refer to or attach all terms and conditions of the solicitation.
- C. The Contracting Officer shall comply with the applicable negotiation procedures in Chapter 8, Competitively Negotiated Contracts, of this manual, except as specifically exempted in this Chapter, or where those procedures apply only to negotiation with more than one (1) source.
- D. The Contracting Officer shall ensure that each sole source contract contains all of the required clauses, representations, and certifications, in accordance with the applicable laws, regulations, or Board adopted policy.

### **11.8 Emergency Procurements**

- A. In accordance with the Public Utilities Code 130234 and Public Contract Code 20233, the MTA may conduct a procurement on an emergency basis if the procurement is essential to an MTA requirement to deal with an existing emergency condition, as defined in the section below.
- B. Both PUC 130234 and PCC 20233, requires a two-thirds finding by the Board that public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property and proceed to expend or enter into a contract without observance of the provisions of the applicable articles regarding contracts, bids, advertisement or notice.
- C. For purposes of an emergency procurement under this Chapter, an "emergency condition", is a situation (such as a flood, epidemic, riot, equipment failure, or any other reason declared by the Chief Executive Officer), which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:
  1. The health or safety of any person;
  2. The preservation or protection of property; or
  3. The continuation of necessary MTA functions.
- D. The justification for emergency procurement shall not be based solely on internal MTA circumstances. In the absence of an emergency condition, an emergency procurement shall not be justified on the basis of any of the following circumstances:



1. The lack of adequate advance planning for the procurement of required supplies, services, or construction;
  2. Delays in procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
  3. Pending expiration of budget authority.
- E. The emergency procurement of supplies or services shall be limited to quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.
- F. If a long-term requirement for the supplies, services, or construction is anticipated, the Contracting Officer shall request the initiating office to initiate a separate non-emergency procurement action at the same time that the emergency procurement is made.
- G. A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of additional commodities, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures initiated under other Chapters in this Manual, can be completed.

### **11.9 Emergency Procurement Findings**

- A. When an emergency procurement is proposed, the Contracting Officer shall prepare a written documentation that sets forth the justification to negotiate the emergency procurement.
- B. Each emergency procurement contract file shall include the following:
1. Specific identification of the document as an emergency procurement finding;
  2. The nature or description of the proposed procurement action;
  3. A specific citation to the Public Contract Code and the applicable provisions of this Manual that provide legal authority for negotiating the emergency procurement;
  4. A description of the emergency, including the nature of the threat to the public health, welfare, or safety, and the nature of the harm that the public might suffer if the requirement were not met by emergency procurement;
  5. A description of the requirement, including the estimated value or cost;
  6. A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification in accordance with the provisions of this Manual;
  7. Any other pertinent facts or reasons supporting the procurement on an emergency basis.
- C. The Contracting Officer shall not be required to publicize the solicitation of a procurement made on an emergency basis in accordance with state laws.
- D. The Department Head of the responsible User department shall submit a request for the emergency procurement to the Chief Executive Officer or designee stating the basis for, or



condition causing the emergency, the items or services or purchases required, and the name of a recommended contractor/consultant.

- E. The Chief Executive Officer or designee shall approve or disapprove the procurement request and, if approved, shall request a 2/3 finding by the Board (See Section 11.8) explaining the necessity for such action.
- F. The Contracting Officer shall determine whether the same type of item or services requested is currently under order through any other procurement method. If such procurement is active, the contacting officer shall:
  - 1. Contact the contractor/consultant and ascertain whether or not adjustments in quantities, delivery, or other performance requirements may be made to accommodate the emergency;
  - 2. When necessary, the Contracting Officer may negotiate premium payments for the procurement provided that reasonable efforts have been made to meet the requirements of the MTA by soliciting bids or quotations from at least three (3) other contractors. Premium payments may be made only if the premium payment is the lowest price available to the MTA.
- G. If no current contract exists for the required items or service, the Contracting Officer shall attempt to solicit offers or proposals from as many potential contractors as possible under the emergency condition. An emergency procurement shall not be made on a sole source basis unless the contract file includes justification for the sole source procurement.
- H. A Contracting Officer may use a letter or a verbal request to solicit proposals for an emergency procurement.
- I. If a letter request is used, the Contracting Officer shall ensure that the letter is as clear and concise as possible and does not include unnecessary verbiage or notices. A letter request shall only contain the data and information necessary for providing a proposal.
- J. The Contracting Officer shall comply with all applicable requirements of Chapter 8, Competitively Negotiated Contracts, except as specifically exempted in this Chapter.
- K. The Contracting Officer shall ensure that each emergency procurement contract contains the required clauses, representations, and certifications, in accordance with the requirements of this Manual.
- L. The Contracting Officer shall ensure that proper records of each emergency procurement are maintained.



**12.0 Purpose And Scope**

This Chapter outlines the MTA’s procedures for the disposal of surplus and obsolete personal property in order to mitigate costs and resources associated with storing and maintaining surplus/obsolete material, and either to obtain an advantageous monetary return from its sale or to make effective use of it in another department.

**12.1 Authority**

Pursuant to Public Utilities Code 30600, the MTA Board may lease, sell, jointly develop or otherwise dispose of any real or personal property within or without the MTA when, in its judgment, it is for the best interests of the MTA to do so.

**12.2 Authorization**

- A. The Board has delegated approval authority and authorization to the CEO to dispose of personal property (all MTA property other than real property), that has a market value of up to \$200,000 and to incorporate surplus personal property guidelines into the Procurement Policies and Procedures Manual.
- B. The Board has delegated approval authority and authorization to the CEO to sell Mobile Source Emission Reduction Credits (MSERC) at market prices, even when such credits have a market value in excess of \$200,000.

**12.3 Responsibilities**

The Director of Purchasing or a designated representative shall retain authority and responsibility for the execution of all obsolete, scrap and surplus sales. Any reference made to the Director of Purchasing shall include his written designee.

**12.4 Application**

This procedure shall apply to all surplus personal property including but not limited to inactive stock and excess, obsolete, worn-out, discarded, scrap, recyclables, construction remnants or otherwise unusable materials, supplies and equipment.

**12.5 Estimate**

An independent estimate will be performed commensurate with the potential for recovery of cost and risk to the Agency.

**12.6 Procedure**

- A. Upon determination by any department that such personal property is no longer needed, the department shall prepare Form 37-28, "Authority to Sell or Dispose Of" and forward the form to the attention of the Sales Coordinator, Procurement Department.
- B. The Sales Coordinator will consider the following avenues of disposition:
  - 1. Alternative use within LACMTA
  - 2. Sale to outside companies



- C. Prior contractual commitments concerning the disposition of property, for example, in the case of Federal or State assisted projects must be strictly observed and will normally take precedence over the terms of this guideline.

### **12.7 Sales Process/Bidding Requirements**

- A. No Bids Required. Formal, public bids are not required where the estimated value of an item or aggregate of like items of personal property is \$40,000 or less. Such sales may be made pursuant to formal bid, informal bid, or negotiated sale in the open market at the discretion of the Director of Purchasing. Informal bids are quotations, either written or oral, which permit prices and other items to be compared.
- B. Formal Bid. A formal bid is one submitted by the bidder pursuant to the following procedure and shall apply to all sales over \$40,000.
  - 1. Notice of the sale shall be published at least once in one or more daily newspapers of general circulation in the County of Los Angeles. Publication may also be made in a trade publication, if appropriate.
  - 2. The Director of Purchasing shall mail notice of the sale to all potential buyers and other interested parties whose names appear on the potential buyers list maintained by the Sales Coordinator who have indicated their interest in purchasing personal property of the kind being sold.
  - 3. Sale will be made by sealed bids to be opened in public and read aloud, as specified in the notice of sale at a place and time which must be at least 30 days after publication and mailing of notice of sale. Bids shall be tabulated and a recommendation made by the Sales Coordinator to the Director of Purchasing, Deputy Executive Officer, Executive Officer, or the Board of Directors, according to the approval levels specified. These recommendations will be in writing and will include documentation indicating the highest responsible and responsive bidder or bidders. MTA reserves the right to accept or reject any or all bids. A record of all bids shall be kept on file under the control of the Sales Coordinator in accordance with MTA Records Retention Schedules.

#### **12.7.1 Tie Bids**

Tie Bids will be decided by drawing of lots and representatives of the firms will be invited to observe.

#### **12.7.2 Notice of Minimum Bid Requirement**

The notice of sale may, if deemed prudent, contain as one of its terms and conditions a requirement that to be considered a bid must be above a stated minimum amount. The notice shall also provide that the sale is made subject to the LACMTA Rules and Regulations.

#### **12.7.3 No Bids**

If no qualified bids which meet the minimum bid requirements, if any, are received by the specified opening time, the Director of Purchasing shall have the authority to negotiate a sale, of such personal property, to any buyer under terms which is in the best



interest of the LACMTA. If the Director of Purchasing determines that it is not possible to negotiate a sale of the personal property, which is in the best interest of the LACMTA, the personal property may be held for future use or sale or sold for scrap or trashed.

**12.7.4 Employee Sales**

Employees are not allowed to bid on sale property. Disposition of surplus items shall not be made to an employee of the MTA.

**12.7.5 Active Inventory Items**

The Inventory Manager shall authorize the sale of active inventory items in response to requests from other public or private entities. Active inventory items will be sold at replacement cost or for a value equal to their current MTA inventory value plus a standard shipping and handling fee of 15% and only on an accommodation basis. Active inventory items will not be sold if such sale will negatively impact MTA operations.

**12.8 Donations**

- A. The donation of any bus, material, equipment or non-revenue vehicle to a public agency, private or "Non-Profit" organization is permitted if it meets one of the following conditions:
- B. If the asset has value, it must be determined that the asset will be used for some public transit related purpose within the MTA's jurisdiction; or
- C. It must be determined that the asset has no market/salvage value; or
- D. It must be determined that the cost to remove or dispose of the asset will exceed the estimated revenue or return from the sale.
- E. This policy shall be implemented in concert with the prohibitions against gifts of public funds.

**12.9 Sales Transactions**

**12.9.1 Record Retention**

- A. All sales transactions shall be documented on form OP-58, Sales Order. Copies of all documents, including notices of sale, awards, sales orders, sales receipts and bills of sale, shall be maintained by the Sales Coordinator as part of the public records of the MTA.
- B. The following information is to be specified on the Sales Order:
  - 1. Customer name
  - 2. Customer address
  - 3. Contact person
  - 4. Sale Order Number
  - 5. Specific Description of item(s) sold.
    - i). Fund Code
    - ii). Account Number



**12.9.2 Coordination With Accounts Receivable**

The Sales Order shall be sent to Accounts Receivable who will create and mail an invoice to the customer. The invoice will clearly specify to the customer that all payments must be sent to the MTA's lockbox.

**12.9.3 Acceptable Payment Methods**

Cash will not be accepted from vendors wishing to purchase bids or construction blueprints, maps, etc. Only checks or money orders will be accepted. If the vendor only has cash, said vendor is to be referred to the Cashiers Office to deposit the cash and obtain a receipt, which can then be exchanged for the documents requested.

**12.10 Accounting Records**

- A. Upon receiving payment, Accounts Receivable will record the amount in the appropriate account and provide a copy of the payment to the Property Sales Coordinator.
- B. On a monthly basis, Accounts Receivable will reconcile reported receipts with the Sales Report. Any variances will be evaluated and resolved.

**12.11 Report Of Sales**

The Director of Purchasing shall prepare and furnish Quarterly Sales Reports to the Deputy Executive Officer, Procurement of all items sold and the revenue received.

**12.12 Definition**

Whenever a reference is made to the CEO, it shall be deemed to include the person's designee including the Executive Officer, Procurement; Deputy Executive Officer, Procurement, Director of Purchasing and Sales Coordinator.

**12.13 Reference**

Currently published Business Plan - Material Sales Program.





### **13.0 Purpose And Scope**

Contracts for construction shall be awarded in accordance with the provisions of this Chapter and other applicable provisions of this Manual as prescribed herein:

#### **13.1 Construction Contracts**

- A. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds twenty-five thousand dollars (\$25,000) shall be formally advertised and awarded to the lowest responsible bidder except where negotiation is authorized pursuant to Chapter 8 and Chapter 10.
- B. Where applicable, Contracting Officers shall ensure that references in specifications conform to widely recognized standards for specifications promulgated by governments, industry, and technical societies and conform to MTA criteria.
- C. Specifications for bids shall not be drafted (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. The MTA shall, if aware of an equal product manufactured in California, name that product in the specification. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the MTA, it may list only one. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.
- D. When "brand name or equal" descriptions are necessary, specifications shall clearly identify and describe the particular physical, functional, or other characteristics of the brand name items that are considered essential to satisfying the requirement.
- E. An estimate of construction costs shall be prepared for each proposed contract and for each proposed contract modification.
- F. The estimate shall be prepared by the User department requesting the proposed contract or contract modification, or by a contract consultant or MTA employee under the direction of the Contracting Officer.
- G. The MTA estimate, or request for an estimate, shall be forwarded to the Contracting Officer with the request for preparation of the contract solicitation or request for initiation of a contract modification. Each estimate shall be prepared in detail.
- H. If two-step sealed bidding is used, the estimate shall be prepared after step one is completed (See Chapter 7).
- I. Access to information concerning the MTA estimate shall be limited to MTA personnel or agents of the MTA whose official duties require knowledge of the estimate. The overall



amount of the MTA estimate shall not be disclosed, except as otherwise permitted by this Manual.

- J. Any pre-solicitation notice and each solicitation shall state the approximate scope of the construction requirement in terms of physical characteristics and estimated price range as specified in Chapter 7.
- K. In no event shall the pre-solicitation notice or solicitation disclose the estimate of costs. Unless the Contracting Officer specifies different price ranges, the estimated price shall be described in terms of one (1) of the following price ranges:
  - 1. Less than \$10,000;
  - 2. Between \$10,000 and \$100,000;
  - 3. Between \$100,000 and \$250,000;
  - 4. Between \$250,000 and \$500,000;
  - 5. Between \$500,000 and \$1,000,000;
  - 6. Between \$1,000,000 and \$5,000,000;
  - 7. Between \$5,000,000 and \$10,000,000; or
- L. More than \$10,000,000, in increments of \$5,000,000 or more, as deemed appropriate by the Contracting Officer.
- M. If different completion periods for separate parts or stages of the work are specified in a construction contract, the Contracting Officer shall include a provision providing for liquidated damages for delay of or failure to perform each separate part or stage of the work.
- N. Unless otherwise authorized by the Board, a Contracting Officer shall use firm-fixed-price contracts to procure construction. A contract may be priced on a lump-sum basis (when a lump-sum is paid for the total work or defined parts of the work), on a unit-price basis (when a unit price is paid for a specified quantity of work units), or a combination of both methods.
- O. Liquidated damages provisions will be included in all construction contracts under which the MTA may reasonably expect to incur damages in the form of increased costs from late completion of the construction and the extent or amount of such damages would be difficult to assess (See Section 14.15 for guidance regarding factors to consider in using a liquidated damages clause and in documenting the decision).
- P. The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings and the specifications and standards incorporated by reference, bids can be prepared on a fair and competitive basis. Materials, equipment, components, or systems shall be described, where possible, by reference to documents generally known to industry. The documents include Federal, military, or nationally recognized industry and technical society specifications and standards. The standards which best represent no more and no less than the MTA's minimum needs shall be selected for incorporation into the construction specifications.



- Q. Liquidated damages provisions for construction contracts are contained in the General Provisions for construction contracts. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the contract.
- R. To make such provisions operative, an appropriate rate of liquidated damages must be stipulated in an additional provision substantially as follows:

### **13.2 Liquidated Damages**

In case of failure on the part of the Contractor to complete the work within the time fixed in the contract or any extensions thereof, the Contractor shall pay to the MTA as liquidated damages, pursuant to the requirements of this contract, sum of \_\_\_\_\_ for each day of delay.

### **13.3 Construction Labor Standards**

- A. This Section provides a detailed description of the Federal labor laws and requirements which are applicable to MTA contracts, establishes administrative procedures in connection with such laws and prescribes the contract clauses with respect to each such labor law or requirement.
- B. All Federally Funded contracts in excess of two thousand dollars (\$2,000) for construction and other contracts in excess of two thousand five hundred dollars (\$2,500) which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard week of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his/her health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials for articles ordinarily available on the open market.
- C. The prescribed clause specifying the above requirements is entitled "Contract Work Hours and Safety Standards Act - Overtime Compensation" which is included in the separate "general provisions" utilized by the MTA for supply and construction contracts.
- D. All contracts for construction or repair shall include a provision requiring the contractor to comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing by any means any persons employed in the performance of the work under the contract or subcontract to give up any part of the compensation to which he is otherwise entitled.



- E. The Contracting Officer is responsible for reporting violations in accordance with 29 CFR, Parts 5.7 and 5.10.
- F. The prescribed clause specifying the above requirements is entitled "Compliance with Copeland Regulations" and is included in the "General Provisions and Standard Specifications for Construction Projects".
- G. General. All MTA construction contracts in excess of \$2,000 shall include a provision requiring the contractor to comply with the Davis-Bacon Act (40 U.S.C. 275a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate no less than the minimum wages specified in a wage determination issued by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week.
- H. Minimum Wage Rates. Minimum wage rates paid to laborers and mechanics employed under any construction contract exceeding two thousand dollars (\$2,000) in amount shall be the rates prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act and any regulations there under. Wage determinations are published by the Department of Labor. Special wage rate determinations may be obtained from the Department of Labor. The MTA must submit requests for such determinations to the Department of Labor at least 45 days prior to the issuance of the solicitation. All requests for wage rate determinations shall be submitted to the Labor Compliance Specialist and must include the following information:
  - 1. The dates proposed for bid advertisement and bid opening;
  - 2. The city and county in which the construction will be undertaken;
  - 3. The estimated cost of the contract for construction; and
  - 4. A description of the construction including the classifications of various work required.
- I. Wage Determinations. The Contracting Officer is responsible for the insertion in each solicitation the current prevailing wage determination issued by the Department of Labor and/or the State of California. In addition, the award of a contract shall be conditioned upon the acceptance of the wage determination. The Contracting Officer is responsible for the reporting of all suspected or reported violations in accordance with the reporting procedures of 29 CFR, Part 5.7.

#### **13.4 Value Engineering**

- A. The Contracting Officer will assure that User departments have considered value-engineering requirements in contracts for construction projects of sufficient size, which offer reasonable opportunities for cost reductions, and that appropriate contract provisions have been included when applicable.
- B. Construction officials shall establish procedures that require value-engineering considerations to be factored into the development of construction contract specifications.



**13.5 Design-Build Contracts**

See Section 9.6.

**13.6 Plans And Specifications**

The MTA shall not require a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design build projects. The MTA may require a bidder to review architectural or engineering plans and specifications prior to submission of a bid, and report any errors and omissions noted by the contractor to the architect or the MTA. The review by the contractor shall be confined to the contractor's capacity as a contractor, and not as a licensed design professional.



This Chapter defines the procurement office and Contracting Officers roles, responsibilities and authorities in the management and administration of MTA contracts.

#### **14.0 Authority And Responsibility**

- A. Limited contract administration authority may be delegated by the Contracting Officer to qualified MTA employees. Delegation of responsibilities shall be in writing and the employee shall be furnished a copy of the delegation.
- B. The Contracting Officer is responsible for the legal, technical and administrative sufficiency of MTA contracts and shall seek legal, technical and other advice within the MTA in fulfilling these responsibilities.
- C. Contract administration is the process of enforcing the terms of a contract through such actions as evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments, processing contract modifications and closeout.

#### **14.1 Delegation Of Authority To Other Personnel**

- A. Contracting Officers, as directed by the Executive Officer, may delegate contract administration functions to other MTA personnel. The delegation must be in writing. The contract administration functions listed below are typical of those delegated:
  - 1. Inspection of the work for compliance with the contract;
  - 2. Issuance of orders to stop and/or resume work where such orders are authorized by the contract excluding suspension of work under SUSPENSION OF WORK article of the General Provisions;
  - 3. Negotiation with the contractor, within specified limits, as to adjustment of contract price and/or time, and recommendation of acceptance or rejection of negotiation results;
  - 4. Preparation of the MTA estimate of contract modifications;
  - 5. Modification of the contract in accordance with the CHANGES article or other articles of the General Provisions, in each instance not to exceed the dollar amount authorized by the Contracting Officer, including the preparation of and furnishing to the contractor sketches and clarifications within that limitation;
  - 6. Preparation and approval of payment estimates. In those cases releasing retained percentage or remitting liquidated damages, the designee will make his/her recommendations thereon in writing to the Contracting Officer;
  - 7. Approval of the contractor's shop drawings, working drawings, materials, equipment, and operations and storage areas;
  - 8. Approval of the contractor's progress schedule;
  - 9. Issuing orders for supplies or services under the provision of a blanket purchase agreement, a basic ordering agreement, or other contract type that provides for the placement of orders under the contract terms;



10. Other duties that the Contracting Officer may assign because of special situations, e.g., inspection of items for compliance with required safety standards, or examination of components to assure that domestic products are delivered; and

11. Approval of the contractor's invoices.

#### **14.2 Approval Of Award Actions**

- A. Requests for initiation and award of procurement actions including contract modifications shall be processed and approved in accordance with the Chief Executive Officer's policy to be published in the MTA's Instruction Policy. Specific guidance regarding the approval of construction contract change orders is included in the Policy.
- B. The MTA annually self certifies to FTA that its procurement system meets FTA requirements and has the technical capacity to comply with Federal procurement requirements. However, FTA retains the right to require concurrence on a case-by-case basis whenever a matter of primary federal concern is involved.
- C. The fact that the MTA has received this certification approval does not waive the responsibility to conform to statutory requirements such as Buy America waivers, bid protests filed after final action by the MTA, and matters of contract administration which impact Federal concerns.
- D. FTA review and concurrence is required in proposed claim settlements before using Federal funds in the following instances:
  - 1. When insufficient funds remain in the approved grant to cover the settlement; or;
  - 2. Where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste or fraud.

#### **14.3 Post-Award Conference**

- A. If the Contracting Officer decides that a post-award conference is needed, with the Prime Contractors Team, he/she shall be responsible for the following:
  - 1. Establishing the time and place of the conference;
  - 2. Preparing the agenda, when necessary;
  - 3. Notifying appropriate MTA representatives;
  - 4. Notifying appropriate contractor representatives;
  - 5. Designating or acting as chairperson
  - 6. Conducting a preliminary meeting of the MTA personnel, if necessary; and;
  - 7. Preparing a summary report of the conference.
- B. It is the policy of the MTA to conduct a "preconstruction meeting" with all construction contractors before the work under a construction contract begins. Such a meeting provides key members of both organizations an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may



also cover specific projects plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of equal employment regulations, civil rights requirements, and other pertinent features of the contract will promote better relations and usually improve construction operations.

- C. The chairperson of the conference shall conduct the meeting. Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract.
- D. The Contracting Officer may make commitments or give directions within the scope of the Contracting Officer's authority, and shall put in writing and sign any commitment or direction, whether or not it changes the contract.
- E. Any changes to the contract that result from the post-award conference shall be made only by a formal contract modification referencing the applicable terms of the contract.
- F. Participants without authority to bind the MTA shall not take actions which alter the contract in any way.
- G. The chairperson shall prepare and sign a summary report of the post-award conference.
- H. The chairperson shall include in the summary report all information and guidance provided to the contractor.
- I. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants' assigned responsibility for further actions, and the due dates for the actions.
- J. The chairperson shall furnish copies of the report to the Contracting Officer, the contractor, and others who require the information.

#### **14.4 Contract Execution By The MTA**

- A. Only a Contracting Officer is authorized to sign and enter into a contract on behalf of the MTA.
- B. The Contracting Officer shall generally sign the contract after the contractor signs it.
- C. The Contracting Officer shall ensure that the person signing for the contractor has authority to bind the contractor.
- D. If the contract is with a partnership, the Contracting Officer, before signing for the MTA, shall obtain a list of all general partners and ensure that each person signing for the partnership has authority to bind the partnership.
- E. When a corporation is participating in a joint venture, the Contracting Officer shall obtain from the corporation secretary a certificate stating that the corporation is authorized to participate in the joint venture.
- F. When an agent is to sign a contract, the agent's authorization to bind the principal shall first be established by evidence satisfactory to the Contracting Officer.





- G. Under certain circumstances, the Contracting Officer may elect to issue notice of award and allow time for submission of required contract documents before execution of the contract.

#### **14.5 Contract Execution By Contractors**

- A. A contract with an individual shall be signed by that individual.
- B. A contract with an individual doing business as a firm shall be signed by that individual and the signature shall be followed by the individual's typed, stamped, or printed name and the words "an individual doing business as \_\_\_\_\_" (insert name of firm).
- C. A contract with a partnership shall be signed in the partnership name by a general partner with authority to bind the partnership.
- D. A contract with a corporation shall be signed in the corporate name, followed by the word and the signature and title of the person authorized to sign for the corporation.
- E. A contract with joint ventures may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section.
- F. Contracts shall not be recommended for Board approval unless there has been a written indication by the prospective contractor of their willingness to be bound by the MTA contracts terms and conditions.

#### **14.6 Contract Distribution**

- A. The Contracting Officer shall distribute copies of contracts or modifications within five (5) working days after execution by all parties.
- B. The contracting office shall distribute, signed copies or reproductions of the signed contract to the contractor and to the office requesting the supplies or services.

#### **14.7 Contract Files**

- A. The head of each office performing contracting or contract administration functions shall establish files containing the records of all contractual actions pertinent to that office's responsibility. The Contracting Officer shall maintain the original contract file until it is turned over to file room.
- B. A central control and, if needed, a locator system shall be established to ensure the ability to locate promptly any contract files.
- C. The documentation in each contract file maintained by the contract office shall be sufficient to constitute a complete history of the transaction for the following purposes:
1. Providing a complete background as a basis for informed decisions at each step of the procurement process;
  2. Supporting actions taken;
  3. Providing information for reviews and investigations; and
  4. Furnishing essential facts in the event of litigation.



- D. The following files shall be established:
  - 1. A file for canceled solicitations; and
  - 2. A file for each contract.
- E. The contracting office file shall document the basis for the procurement and the award, the assignment of contract administration (including payment responsibilities), and any subsequent action by the contracting office.
- F. The separate contract file to be maintained by the Contracting Officer's representative shall document actions prerequisite to, substantiating, and reflecting contract payments.
- G. Each file normally shall be kept separate. However, if appropriate, any and all of the files may be combined, especially if the same office performs all functions or any combination of the functions.
- H. Files shall be maintained at organizational levels that ensure the following:
  - 1. Effective documentation of contract action;
  - 2. Ready accessibility to principal users;
  - 3. Minimal establishment of duplicate and working files; and
  - 4. Conformance with any policies or procedures for file location and maintenance.
- I. All contractual documents and correspondence will be filed in reverse chronological order within the file.
- J. The Contracting Officer must keep a chronological record of all actions taken, conversations held, and decisions made which affect the course of a procurement.
- K. All original documents are to be kept in the contract file; only photocopies are to be loaned or transferred.
- L. The Project Manager for each project must ensure that he/she forwards all original documents pertaining to a contract action to the Contracting Officer for maintenance in the official contract file.
- M. Documents to be kept in the contract file are detailed in the Buyer Handbook.

#### **14.8 Records Management And Records Retention**

Procurement staff will manage and retain contract files in accordance with the MTA Board approved MTA Records Management Policy and Records Retention Schedule.

#### **14.9 Contract Modifications**

- A. Modifications, additional work orders, or work directions/task orders must adhere to the appropriate negotiation procedures as described in this Chapter.
- B. Only a Contracting Officer or an authorized representative acting within the scope of the Contracting Officer's delegated contract authority is authorized to execute a contract modification on behalf of the MTA. Other MTA personnel shall not do any of the following:



1. Execute Contract Modifications;
  2. Act in a manner that causes a contractor to believe that they are authorized to bind the MTA; or
  3. Direct or encourage a contractor to perform work that should be the subject of a Contract Modification.
- C. A Contract Modification may be either bilateral or unilateral. The Contracting Officer or an authorized representative acting within the scope of his/her authority may use a bilateral contract modification to do the following:
1. Make negotiated equitable adjustments resulting from the issuance of a change order;
  2. Formalize a letter contract; or
  3. Reflect other agreements of the parties to modify the terms of the contract e.g., a supplemental agreement for work outside the scope of the contract.
- D. The Contracting Officer or an authorized representative acting within the scope of his/her authority may use a unilateral contract modification to do the following:
1. Make administrative changes, such as correction of typographical errors or funding information;
  2. Issue change orders;
  3. Make changes authorized by a provision of the contract other than a changes clause, such as an option; or
  4. Issue a termination notice.
- E. The Contracting Officer may require that written pre-negotiation objectives be established for contract modifications in excess of one hundred thousand dollars (\$100,000) and may require that pre-negotiation objectives be established for modifications at lower amounts.
- F. If an unpriced contract modification is issued, the Contracting Officer or an authorized representative shall justify, in writing, the reasons for the issuance of the unpriced modification.
- G. The Contracting Officer or an authorized representative shall not execute a contract modification that causes or will cause an increase in the funding level of the contract without having first obtained a certification of the availability of funds. The certification shall be based on the negotiated price or the negotiated maximum price. When issuing a unilateral change order, the certification of funds shall be based on the MTA's estimate.
- H. Contract modifications for contracts shall be reviewed as required by policy instructions. Chapter 2 sets forth dollar thresholds for Board approval of contract modifications.
- I. The MTA shall not be responsible for any costs incurred by a contractor for any additional work or other actions by a contractor outside the scope of the written contract and written contract modifications signed by the Contracting Officer. A contractor shall not rely upon any written or oral statements or directions of employees or agents of the MTA other than the



Contracting Officer for authority to perform work, alter schedules or specifications, or any other action that would normally require a written contract modification.

- J. The Contracting Officer shall assign responsibility for negotiation of contract modifications to contract administrators in Procurement for all modifications to be executed within his/her delegated authority. Assigned contract administrators shall also monitor the construction contract modifications negotiated by Contracting Officer representatives authorized pursuant to Procurement policy.

#### **14.10 Authorization For Contract Changes**

Contract changes shall be made pursuant to the Changes Articles in the basic contract and Change Orders in accordance with PUC §130243 when it becomes necessary to change the contract cost and/or fees, scope of work, contract duration, or any other element of the contract. All contract changes must be acknowledged in writing, before the work is performed, by the authorized representative of the Contractor and the Contracting Officer as set forth in this Manual.

#### **14.11 Change Orders**

- A. The Contracting Officer shall include a Changes clause in each solicitation and contract.
- B. Each Changes clause shall specify the kinds of contract changes that the Contracting Officer may make within the scope of the contract, by written change order at any time, without notice to the sureties, if any.
- C. Each Changes clause shall be specific to the type of contract being solicited or executed.
- D. Each Changes clause shall include provisions for adjustments in contract price, delivery schedules, and other contract terms, which are appropriate to the type of contract.
- E. In accordance with PUC §130243, the following procedures shall be:
  - 1. When a change order is proposed, the Contracting Officer or designee shall be notified and shall determine whether a change order is required. After consulting with the Office of Counsel and appropriate technical advisers, the Contracting Officer shall either approve or disapprove the proposed contract change order.
  - 2. The Office of Counsel shall be consulted on the proposed change order at the earliest possible time to consider and render advice on the legal implications of the proposed change. The Contracting Officer shall not approve a proposed change order unless the Counsel recommends changing the terms of the contract.
  - 3. The Contracting Officer shall require the contractor to submit certified cost and pricing data for the proposed change, and shall require an internal fiscal audit of any proposed change order that would cost in excess of one hundred thousand dollars (\$100,000) to implement, prior to award or negotiation of the change.
  - 4. The opinions of informed individuals working on the contract who oppose the adoption of a proposed change order shall be documented and be taken into consideration by the authority's change control board when determining whether a contract change is warranted.



- F. The Contracting Officer may issue a written change order when a change can be accomplished within the provisions of the Changes clause.
- G. After the Contracting Officer issues a change order, the contractor shall continue performance of the contract as changed. In cost-reimbursement contracts, the contractor shall not be obligated to continue performance or incur costs beyond the limits established in the contract.
- H. After the Contracting Officer issues a unilateral change order, the Contracting Officer and the contractor shall execute a separate bilateral modification reflecting the resulting equitable adjustment in contract terms after agreement on terms are reached.
- I. If the Contracting Officer and the contractor agree in advance to an equitable adjustment in the contract price, delivery terms, and/or other contract terms, the Contracting Officer shall enter into a bilateral contract modification.
- J. The Contracting Officer shall negotiate an equitable adjustment resulting from a change order in the shortest practicable time.
- K. If the Contracting Officer is unable to accomplish a timely settlement to equitably adjust the contract for an MTA issued change, consideration should be given to issuing a unilateral settlement decision.
- L. Contract changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of MTA. If a significant cost increase could result from a contract change and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless impractical.
- M. A written memorandum shall be prepared to record the results of negotiations. The memorandum, a summary of negotiations, shall set forth the agreement between the parties on major issues e.g., price, delivery, performance time, payment terms and any special provisions to be included in the contract. The memorandum shall explain the differences, if any, between the negotiated price adjustment and the pre-negotiation position. When there are numerous differences involving significant sums, a tabular format should be used to show the price differences and the differences must be explained in the narrative accompanying the tabulation. For small purchases made under the procedures in Chapter 10, the reconciliation can be handwritten on the requisition or other suitable file document.
- N. The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000 (increases or decreases). The Contractor for each change or series of related changes shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregated, direct cost of work, both charged and not charged, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the change ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.
- O. A Contract Modification, which reflects an equitable adjustment in the contract price, is subject to review in accordance with the dollar value of the adjustment and as prescribed by



levels of approval in Chapter 2. When the price settlement reflected by the contract modification includes both price increases and decreases, the level of review required for approval of the modification shall be determined based on the aggregate of absolute value (disregarding whether individual amounts are debits or credits). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modifications. For example, if the Board approval threshold for modifications is \$200,000, a price increase of \$150,000 and a reduction in price of \$75,000 would qualify for Board review/approval.

- P. If required, the Contracting Officer shall ensure that a cost analysis is performed, in accordance with Chapter 15 of the Manual.
- Q. To avoid subsequent controversies that may result from a modification containing an equitable adjustment as the result of a change order, the Contracting Officer shall do the following:
  - 1. Ensure that all elements of the equitable adjustments have been presented and resolved; and
  - 2. Include in the modification a release statement, approved by the Executive Officer, in which the contractor releases the MTA from any liability for further equitable adjustments attributable to the facts or claims giving rise to the contractor's proposal for adjustment unless specific exceptions are expressly set forth in the release statement.
- R. Failure to agree to any adjustment shall be a dispute under the Disputes clause in the contract and shall be resolved in accordance with the procedures authorized by Chapter 21 of this Manual.

#### **14.12 Suspension Of Work/Stop Order**

- A. Situations may occur during contract performance that causes the Contracting Officer to order a suspension of work, or a work stoppage. This section provides guidelines for Contracting Officer actions for those situations, as authorized by an appropriate contract clause.
- B. The Contracting Officer may order the contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate.
- C. The Contracting Officer may, at any time, by written order to the contractor require the contractor, to stop all, or any part, of the work called for under the contract. The initial stop work order commences the day it is received by the supplier and may be unilaterally issued for over a period of 90 calendar days or less. The stop work can be renewed by mutual agreement by the contractor and Contracting Officer for additional 90-day periods.
- D. If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of



this contract caused by the delay or interruption and the contract shall be modified in writing accordingly.

- E. The Executive Officer shall prescribe a contract clause, which gives the MTA the right to suspend or stop work.

#### **14.13 Termination**

- A. All MTA contracts exceeding \$10,000 must contain provisions enabling the MTA to terminate such contracts for the convenience of the MTA. These provisions shall specify the manner in which such termination will be effected and the basis for settlement. There shall also be included in such contracts appropriate provisions specifying causes for which the contracts may be terminated for default. Termination settlement proposal in excess of five hundred thousand dollars (\$500,000) are subject to audit by Management Audit Services.
- B. Terminations for Convenience of the MTA:
  - 1. The termination for convenience clauses prescribed for use in fixed price construction contracts is included in the MTA's General Provisions and Standard Specifications for Construction Projects.
  - 2. The prescribed termination for convenience clause prescribed for use in fixed price contracts for supplies and services is included in the MTA's General Provision for Supply and Service Contracts.
  - 3. MTA contracts will be terminated for convenience only when this is determined to be in the best interests of the MTA. The Contracting Officer's determination shall be in writing and approved by the MTA Official/Board that approved the original award. In lieu of issuing a notice of termination for convenience, the Contracting Officer will effect a no-cost settlement agreement where possible and appropriate.
  - 4. Formal written notice to the contractor is necessary to terminate a contract for convenience. Such notice will state that the contract is being terminated pursuant to the termination for convenience provision of the contract, the effective date, the extent of termination and instructions to the contractor to cease performance under the contract.
  - 5. The Contracting Officer will negotiate a no-cost settlement with the contractor if possible. Otherwise, the Contracting Officer will negotiate an appropriate settlement agreement with the contractor pursuant to the provisions of the termination for convenience clause of the contract. The principles for settlement of terminated contracts set forth in the MTA Desk Instruction Policy may be used as a guide in the settlement of terminated contracts.
- C. Terminations For Default:
  - 1. Construction Contracts. The default clauses prescribed for use in fixed-price construction contracts is included in the General Provisions and Standard Specifications for Construction Projects.



2. Contracts for supplies and services. The prescribed Termination for Default clause for contracts for supplies and services is included in the MTA's General Provisions for Supply and Services Contracts.
3. If a contractor's right to proceed is terminated for default, the MTA may take over and complete the work or cause it to be completed, and the contractor and his sureties, if any, shall be liable to the MTA for any increased costs caused thereby. The contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, or for actual damages, if liquidated damages are not so provided.
4. If the Contracting Officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the Contracting Officer shall not terminate the contractor's right to proceed, nor shall he/she charge the contractor with liquidated damages (or if no liquidated damages, then actual damages) because of any delays occasioned by such causes.
5. Where the surety does not complete performance of the contract, the Contracting Officer normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation; whichever procedure is most appropriate under the circumstances. The Contracting Officer must use reasonable diligence to obtain the lowest price available for completion.
6. If, after due consideration, the Contracting Officer determines that termination is not in the best interest of the MTA although the contractor is in default, the Contracting Officer may permit the contractor to continue the work, and the contractor and his sureties shall be liable to the MTA for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, for any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

#### **14.14 Additional Contract Compliance**

- A. The Contracting Officer shall ensure that the supplies, services, or construction procured under each MTA contract conform to the quality, safety and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.
- B. The Contracting Officer shall be responsible for the following:
  1. Ensuring that each contract includes inspection and test and other quality requirements, including warranty and reliability clauses when appropriate, which are necessary to protect the MTA's interests;
  2. Ensuring that contract quality assurance is conducted by the MTA before acceptance as otherwise provided in this Chapter, by or under the direction of MTA personnel;
  3. Ensuring that no contract precludes the MTA from performing inspection, test, or other pertinent quality assurance measures;





4. Ensuring that non-conforming supplies, services, or construction are rejected, except as otherwise provided in this Chapter;
5. Obtaining any quality plan specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies, services, or construction from the office responsible for the technical requirements; and
6. Including in solicitation and contracts the necessary requirements for the contractor's control of quality for the supplies, services, or construction to be procured.

#### **14.15 Liquidated Damages**

- A. A liquidated damages clause may be used in a contract when the following factors apply:
  1. The time of delivery or performance is such an important factor in the award of the contract that the MTA may reasonably expect to suffer damages if the delivery or performance is delinquent; and
  2. The extent or amount of damages would be difficult or impossible to ascertain or prove.
- B. See Construction Contracts, Chapter 13, for guidance regarding construction contracts.
- C. When deciding whether to include a liquidated damages clause in a contract, the Contracting Officer shall consider the probable effect on pricing, competition, the costs and difficulties of contract administration, and similar matters.
- D. In order to avoid setting an unenforceable penalty, liquidated damages shall not be fixed without reference to probable actual damages. The Contracting Officer shall determine a reasonable rate of liquidated damages on a case-by-case basis.
- E. The Contracting Officer shall set the rate of liquidated damages based on the recommendations and justifications provided by the User department and the Contracting Officer's assessment of all applicable factors.
- F. The Contracting Officer shall document the justification of the rate of liquidated damages in the contract file and shall take all reasonable steps to mitigate these damages.
- G. A contract may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages.
- H. If a liquidated damages clause is included in a contract and a basis for termination for default exists, the Contracting Officer shall take appropriate action expeditiously to obtain performance by the contractor or to terminate the contract.
- I. If a delivery or performance is desired after termination for default, efforts shall be made to obtain the delivery or performance from another source within a reasonable time.

**14.16 Subcontracts**

## A. Consent to Subcontract:

1. The Contracting Officer may require the contractor to obtain consent for any or all subcontractors in any instance where the Contracting Officer determines that it would be in the best interests of the MTA;
2. The Contracting Officer shall require consent to subcontract in those instances where approval of subcontractors is required;
3. The Contracting Officer may require, as part of an invitation for bids (IFB) or request for proposals (RFP), that each responding vendor include in its response a list of proposed subcontractors, a list of tasks or items which the vendor intends to subcontract, or both;
4. In determining whether to require consent to subcontract, the Contracting Officer shall consider the following:
  - a. The complexity of the work to be done under subcontracts;
  - b. The value of the subcontract(s);
  - c. Whether the MTA's interests can be adequately protected without requiring consent; and
  - d. Any other relevant factors.

## B. If the decision is not to require consent to subcontract, the Contracting Officer shall include a written justification in the contract file in each of the following circumstances:

1. The prime contract is a fixed-price incentive or fixed-price re-determinable contract and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000);
2. The prime contract is a firm-fixed-price or fixed-price contract with an economical price adjustment provision and a new subcontract results from an unpriced modification to the prime contract price and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000);
3. The subcontract is to be a cost-reimbursement, time-and materials, or labor-hour contract and the subcontract price is estimated to exceed two hundred thousand dollars (\$200,000);
4. The subcontract is to be one of several subcontracts under a prime contract with a single subcontractor for the same or related supplies or services which in the aggregate are estimated to total more than one hundred thousand dollars (\$100,000) and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000); or
5. Contracts for refuse services, or shipment and storage of property, and the MTA requires prior approval of subcontractors' facilities.

## C. The Contracting Officer shall ensure that any requirements for consent to subcontract are included in the solicitation for the prime contract.



- D. Upon receipt of the contractor's request for consent to subcontract, the Contracting Officer shall do the following:
  - 1. Promptly evaluate the contractor's request for consent to subcontract;
  - 2. Obtain assistance in the evaluation from audit, pricing, technical, or other specialists as necessary; and
  - 3. Notify the contractor in writing of consent to subcontract or the withholding of consent to subcontract, including changes or corrections required.
- E. The Contracting Officer's consent to subcontract shall not constitute a determination of the acceptability of the subcontract terms or price or of the allowability of costs, unless the consent to subcontract specifies otherwise.
- F. The Contracting Officer shall not consent to subcontract in any of the following instances:
  - 1. When the fee in a cost-reimbursement subcontract exceeds any applicable fee limitations;
  - 2. When a payment under the subcontract is on a cost-plus-a percentage-of-cost basis;
  - 3. When the Contracting Officer is obligated to deal directly with the subcontractor;
  - 4. When the subcontract makes the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the MTA; or
  - 5. When there is a repetitive or unduly protracted use of cost reimbursement, time-and-materials, or labor-hour subcontracts.
- G. When a solicitation contains a requirement for consent to subcontract, the contractor shall be required to submit a request for consent to subcontract.
- H. The Contracting Officer shall review the request for consent to subcontract and supporting data, and shall consider the following issues:
  - 1. Whether the selection of the particular supplies, equipment, or services is technically justified;
  - 2. Whether the contractor has complied with the prime contract requirements regarding subcontracting with certified minority businesses;
  - 3. Whether adequate price competition was obtained or its absence properly justified;
  - 4. Whether the contractor adequately assessed and disposed of subcontractor alternate proposals, if offered;
  - 5. Whether the contractor has a sound basis for selecting and determining the responsibility of the particular subcontractor;
  - 6. Whether the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certification;



7. Whether the proposed subcontract type is appropriate for the risks involved and is consistent with current policy;
  8. Whether adequate consideration has been obtained for any proposed subcontract that will involve the use of MTA furnished facilities;
  9. Whether the contractor has adequately and reasonably translated the prime contract technical requirements into subcontract requirements; and
  10. Whether the subcontractor has been suspended, debarred, or is otherwise ineligible for award.
- I. The provisions of this section and implementation of these provisions are not to be construed as creating privity of contract with any subcontractor to a MTA contractor.

#### **14.17 Closeout Of Contracts**

- A. Because of the complexities of MTA procurement activities, every contract situation cannot be covered by a single procedure. Therefore, the Contracting Officer should exercise judgment and discretion in the closeout of files for a completed contract.
- B. A completed contract is one which is both physically and administratively complete and in which all aspect of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. A contract is physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the MTA, including those articles and services for which no specific compensation may have been stipulated. A contract is administratively complete when all payments have been made and administrative actions accomplished.
- C. The contracting activity is responsible for review of the contract file and obtaining all necessary documentation to ensure that: (1) all deliverables and/or services (including any reports) required under the contract have been received and accepted; (2) the terms and conditions of the contract have been complied with; (3) disposition of accountable property under the contract has been accomplished; (4) a final audit (cost type contracts), when appropriate, has been performed and all questioned costs have been resolved; (5) the final voucher for the contract has been certified and sent to the appropriate finance office; and (6) all necessary actions required to close the contract are completed and documented.
- D. Small purchase files shall be considered closed when the Contracting Officer receives evidence of receipt of property and final payment.
- E. Files for all firm-fixed price contracts, other than small purchases, shall be closed within six (6) months after the end of the month in which the Contracting Officer receives evidence of physical completion.
- F. Files for contracts requiring settlement of indirect cost rates shall be closed within thirty-six (36) months after the end of the month in which the Contracting Officer receives evidence of physical completion.



- G. Files for all other contracts shall ensure that all required contractual actions have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.
- H. A contract file shall not be closed in any of the following situations:
  - 1. If the contract is the subject of a claim or dispute;
  - 2. If the contract is in litigation or under appeal; or
  - 3. In the case of a termination, if all termination actions have not been completed.
  - 4. If FTA approval is required and has not been received.

**14.18 MTA Property**

Contracting Officers shall include a provision in solicitations and contracts, which provides for control and accountability of MTA property (except real property) furnished by the MTA under a contract, or acquired by the contractor during contract performance and when the MTA reimburses the contracts for the acquisition.

**14.19 Post-Award Responsibilities**

The User department/project manager will conduct all further coordination on technical issues between the contractor and the MTA, subsequent to the issuance of the “Notice to Proceed” letter. Issues affecting the business or legal terms in the contract, modifications or supplemental agreements to the contract must immediately be brought to the attention of the Contracting Officer. The Contracting Officer will coordinate discussions with appropriate MTA personnel and the contractor. The official contract and all documents pertaining thereto will be maintained by Procurement.

**14.20 Performance Evaluation**

Each contractor's performance shall be evaluated quarterly by the project manager. These quarterly evaluation forms will be sent to the Contracting Officer and to the User department in a timely manner. Upon completion of the contractor's effort, a final evaluation report, in a narrative form, prepared by the project manager, will be sent to the Contracting Officer to be used for future evaluations of the contractor.

**15.0 Purpose And Scope**

- A. This Chapter describes cost principles and procedures for:
  - 1. The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed, and
  - 2. The determination, negotiation, or allowance of costs when required by a contract clause.
- B. The cost principles and procedures set forth in this Chapter shall be used in the following situations:
  - 1. The pricing or estimation of costs in all contracts based on other than sealed bidding;
  - 2. The pricing or estimation of cost in change orders or contract modifications;
  - 3. Settlement of contract costs for contracts which have been terminated; and
  - 4. Allowability of costs under contract provisions, which provide for reimbursement of costs.
  - 5. Evaluation of competitive bids and proposal.
- C. In addition to those contracts where the application of cost principles is required, the Contracting Officer may include a clause, approved by the Executive Officer, requiring the use of cost principles and procedures set forth in this Chapter to determine the allowability of estimated or incurred costs in any contract where the Contracting Officer determines that the negotiation, allowance, determination, or estimation of costs may be required or necessary.
- D. The application of cost principles to fixed-price contracts and subcontracts is to assist the Contracting Officer in negotiating a fair and reasonable price and shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties may reflect agreement only on the total price.
- E. The cost principles and procedures set forth in this Chapter shall not apply to the following:
  - 1. The establishment of prices under contracts awarded on the basis of sealed bidding;
  - 2. Prices fixed by law or regulation; or
  - 3. Prices based on established catalog prices or established market prices.
- F. This Chapter contains policies and procedures for bid and proposal analysis. It describes when cost or price analysis required, under what circumstances the requirement can be waived, and the MTA policy regarding cost analysis for procurements where there is inadequate competition or sole source situations.

**15.1 Total Costs**

The total cost of a contract shall be in the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits.



**15.2 Determining Allowability**

- A. When determining whether a cost is allowable, the Contracting Officer shall consider the following factors:
  - 1. Reasonableness;
  - 2. Allocability;
  - 3. Consistency with generally accepted accounting principles and practices appropriate to the circumstances;
  - 4. The terms of the contract;
  - 5. Consistency with the limitations set forth in this Chapter;
  - 6. Consistency with any applicable law; and
  - 7. Generally consistent with OMB Circular No. A-87, Cost Principles for State and Local Governments.
- B. If a contractor's accounting practices are inconsistent with this Chapter, the Contracting Officer shall not allow costs resulting from those practices in excess of the amount that would have resulted from using practices consistent with this Chapter.

**15.3 Determining Reasonableness**

- A. The Contracting Officer shall determine a cost to be reasonable if it does not differ from or exceed an amount that which would be incurred by a prudent person in the conduct of a competitive business, in accordance with the provisions of this Chapter.
- B. In determining the reasonableness of a given cost, the Contracting Officer shall consider the following factors:
  - 1. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;
  - 2. The restraints or requirements imposed by generally accepted sound business practices, arms length bargaining, Federal laws and MTA regulations, and contract terms and specifications;
  - 3. The action that a prudent business person would take, considering responsibilities to the owner of the business, employees, customers, and the public at large;
  - 4. Any significant deviations from the established practices of the contractor that may unjustifiably increase the contract costs; and
  - 5. Any other relevant factors.

**15.4 Determining Allocability**

- A. The Contracting Officer shall determine that a cost is allocable if the cost is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship, in accordance with the following section.
- B. The Contracting Officer shall consider a cost allocable if the cost meets one or more of the following criteria:
  - 1. The cost is incurred specifically for the contract;
  - 2. The cost benefits both the contract and the other work, and can be distributed to both in reasonable proportion to the benefits received; or
  - 3. The cost is necessary to the overall operation of the business, although a direct relationship to any particular cost objective may not be evident.

**15.5 Credits**

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost, which is received by or accrued to the contractor, shall be credited to the MTA either as a cost reduction or by cash refund.

**15.6 Accounting For Unallowable Costs**

- A. The Contracting Officer shall identify and exclude from each billing, claim, and proposal costs that are expressly unallowable under this Chapter or mutually agreed to be unallowable under an advance cost agreement.
- B. When costs are identified as unallowable or mutually agreed to be unallowable, all directly associated costs shall also be unallowable.
- C. Costs and directly associated costs specifically designated as unallowable shall be identified when included in or used in computing any billing, claim, or proposal applicable to an MTA contract.
- D. The Contracting Officer shall require records as support for claims, billing, and proposals that are adequate to establish and maintain visibility of those costs, and directly associated costs, which have been identified as unallowable.
- E. The Contracting Officer shall identify unallowable costs involved in determining rates used for standard costs, indirect cost proposals, or billings at the time rates are proposed, established, revised, or adjusted.

**15.7 Direct Costs**

- A. Direct costs associated with MTA contracts shall be segregated from other costs and recorded in accounts identifying them with the particular contract objective to the maximum extent possible.
- B. Costs specifically identified with final cost objectives that are unrelated to MTA contracts, including other contracts or general business objectives of the contractor, shall not be charged to an MTA contract directly or indirectly.





- C. For reasons of practicality, any direct cost of a minor dollar amount may be treated as an indirect cost if the accounting treatment used is consistently applied and produces substantially the same result as treating the cost as a direct cost.
- D. Any cost that has been allocated to any indirect cost pool or objective shall not be allowed as a direct cost.

### **15.8 Indirect Costs**

- A. An indirect cost shall not be allocated to an MTA contract if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that contract or any final cost objective not related to the MTA contract.
- B. Indirect costs shall be accumulated into logical groupings known as "indirect cost pools".
- C. The contractor's method of allocating indirect costs shall be in accordance with generally accepted accounting principles, which are consistently applied, in accordance with the provisions of this Chapter.
- D. The Contracting Officer shall examine the contractor's method of allocating indirect costs when any of the following apply:
  - 1. A substantial difference exists between the cost patterns of work performed under the contract and the contractor's other work;
  - 2. A significant change occurs in the nature of the contractor's business, extent of subcontracting, fixed asset improvement programs, inventories, volume of sales and production, manufacturing process, products, or other relevant circumstances; or
  - 3. Indirect cost groups developed for a contractor's primary location are applied to off-site locations, in which cases separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objective.
- E. The Contracting Officer shall consider the base period for indirect cost allocation as the one in which the costs are incurred and accumulated for distribution to work performed in that period.

### **15.9 Cost Principles**

Costs shall be allowed to the extent that they are reasonable, allocable, and determined to be allowable.

### **15.10 Proposal Analysis**

- A. In accordance with FTA requirements, the Contracting Officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts and request and evaluate the advice of specialists in such fields as contracting, finance, law, contract audit, packaging, quality control, engineering, traffic management, and cost/price analysis. The Contracting Officer should have appropriate specialists attend negotiations when complex problems involving significant matters will be addressed. The Contracting Officer may assign responsibility to a negotiator or cost analyst for:



1. Determining the extent of specialists' advice needed and evaluating that advice;
  2. Coordinating a team of experts;
  3. Consolidating pricing data and developing a pre-negotiation objective; and
  4. Conducting negotiations.
- B. When cost or pricing data are required, a cost analysis is required to evaluate the reasonableness of individual cost elements. In addition, a price analysis is required to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the Contracting Officer shall perform a price analysis to ensure that the overall price offered is fair and reasonable.
- C. The Contracting Officer shall require contractors to perform:
1. Price analysis for all significant proposed subcontracts; and
  2. Cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis.

### **15.11 Cost Or Pricing Data**

- A. Cost or pricing data submitted by an offeror or contractor enables the MTA to perform cost or price analysis and ultimately enable the MTA and the contractor to negotiate fair and reasonable prices. Cost or pricing data may be submitted actually or by specific identification in writing.
- B. "Cost or pricing data" means all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to significantly affect price negotiations.. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as (a) vendor quotations; (b) nonrecurring costs; (c) information on changes in production methods and in production or purchasing volume; (d) data supporting projections of business prospects and objectives and related operation costs; (e) unit-cost trends such as those associated with labor efficiency; (f) make-or-buy decisions; (g) estimated resources to attain business goals; and (h) information on management decisions that could have a significant bearing on costs.

### **15.12 Certified Cost Or Pricing Data**

- A. Certified cost or pricing data is data that requires certification as accurate, complete and current. Except as provided in Section 15.14 below, certified cost or pricing data is required before accomplishing any of the following actions:
1. The award of any negotiated contract (except for unpriced actions such as a letter contract) expected to exceed five hundred thousand dollars (\$500,000) or the applicable threshold (which is \$250,000 as of January 2001) as specified in the CalTrans Local Assistance Procedures Manual for contracts that are Federal Highway Administration



- funded transportation projects subject to the requirements of Title 23, United States Code;
2. The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed five hundred thousand dollars (\$500,000) in the aggregate or one hundred thousand dollars (\$100,000) for PUC §130243 changes.  
  
(For example, a thirty thousand dollars (\$30,000) modification resulting from a reduction of two hundred seventy thousand dollars (\$270,000) and an increase of two hundred forty thousand dollars (\$240,000) is a pricing adjustment exceeding five hundred thousand dollars (\$500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification;
  3. The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed five hundred thousand dollars (\$500,000);
  4. The modification of any subcontract covered by subparagraph (c) above, when the price adjustment (see paragraph A.2 above) is expected to exceed five hundred thousand dollars (\$500,000) or one hundred thousand dollars (\$100,000) for PUC §130243 changes.
  5. If certified cost or pricing data are needed for pricing actions over the thresholds contained in the small purchase and other simplified purchase procedures (Chapter 10) and not in excess of five hundred thousand dollars (\$500,000), they may be obtained.
  6. There should be relatively few instances where certified cost or pricing data and inclusion of defective pricing clauses would be justified in awards between the thresholds contained in the small purchase and other simplified purchase procedures (Chapter 10) and five hundred thousand dollars (\$500,000). The data, which, the Contracting Officer requires to be submitted, shall be limited to that data necessary to determine the reasonableness of the price. Whenever certified cost or pricing data are required for pricing actions of five hundred thousand dollars (\$500,000) or less, the Contracting Officer shall document the file to justify the requirement. When awarding a contract under the thresholds contained in the small purchase and other simplified purchase procedures (Chapter 10), the Contracting Officer shall not require certified cost or pricing data.
  7. If an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the price proposed is not based on this catalog or market price (see subparagraph A.7 above), the Contracting Officer may, if doing so will result in a fair and reasonable price, limit any requirement for cost or pricing data to those data that pertain to the differences between the items. When the difference between the catalog or market price of an item or items and the proposed total contract price is five hundred thousand dollars (\$500,000)



- or more, the Contracting Officer shall require submission of certified cost or pricing data to identify and justify that difference unless an exemption or waiver is granted.
- B. The Contracting Officer will include in the contract a defective pricing clause approved by the Executive Officer that provides for reduction of the contract price by any significant amount that such price was increased because of submission of contractor or subcontractor defective cost or pricing data.
- C. When certified cost or pricing data are required, the Contracting Officer shall require the contractor or prospective contractor to submit to the Contracting Officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:
1. A proposal by cost element shall contain a breakdown by individual cost element and be signed by the contractor's representative;
  2. The cost or pricing data; and
  3. A certificate of current cost or pricing data, in the format specified, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price.

### **15.13 Prohibition For Obtaining Certified Cost & Pricing Data**

- A. Cost or pricing data shall not be obtained for acquisitions at or below the small purchases threshold.
- B. The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism):
1. When the contracting officer determines that prices agreed upon are based on adequate price competition;
  2. When the contracting officer determines that prices agreed upon are based on prices set by law or regulation;
  3. When a commercial item is being acquired;
  4. When a waiver has been granted by the Executive Officer, Procurement.
    - a. Adequate Price Competition:

A proposal is exempt from the requirement for submission of certified cost or pricing data if the following is determined:

      - i). Two or more responsible offerors, competing independently, submit priced offers that can satisfy MTA's expressed requirements:
        - 1 Award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection; and
        - 2 There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be

supported by a statement of the facts and approved at a level above the contracting officer.

- ii). There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if:
  - 1 Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that
  - 2 The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and
  - 3 The determination that the proposed price is based on adequate price competition, is reasonable or price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

b. Commercial Items

- i). Any acquisition for an item that meets the commercial item definition or any modification that does not change the item from a commercial item to a noncommercial item is exempt from the requirement for cost or pricing data.  
A commercial item is any item, other than real property, that is
  - 1 A type customarily used for nongovernmental purposes and that has been sold, leased or licensed to the general public; or
  - 2 Has been offered for sale, lease or license to the general public.
- ii). Any item that evolved from an item described above through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation.
- iii). Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred above.
- iv). Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed.



c. Prices set by law or regulation

A price set by law or regulation is exempt from the requirement for submission of certified cost or pricing data. Pronouncements in the form of periodic rulings, reviews, or similar action of a governmental body, or embodied in the laws, are sufficient to establish the price.

#### **15.14 Price Analysis**

- A. Comparison of proposed prices received in response to the solicitation.
- B. Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items.
- C. Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- D. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- E. Comparison of proposed prices with independent MTA cost estimates.

#### **15.15 Cost Analysis**

- A. Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Cost analysis is required;
  - 1. When using a cost-reimbursement contract to determine probable cost
  - 2. In sole source contracts, including contract modification and change orders and
  - 3. Where price analysis is insufficient in fixed-price contracts to determine price reasonableness.
  - 4. Where the contracting officer determines that a cost realism analysis is necessary to avoid unduly low prices.
- B. Sound pricing depends primarily upon the exercise of good judgment by all personnel concerned with the procurement. Each procurement should be individually considered and a judgment made regarding the need for and extent of a cost and/or price analysis.
- C. The Contracting Officer shall, as appropriate, use the techniques and procedures outlined in paragraphs (1) through (6) below to perform cost analysis:
  - 1. Verification of cost or pricing data and evaluation of cost elements, including:
    - a. The necessity for and reasonableness of proposed costs, including allowances for contingencies as provided for in FAR part 31 and OMB Circular No. A-87;
    - b. Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;



- c. A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and
    - d. The application of audited or negotiated indirect cost rates (see OMB Circular No. A-87 and FAR part 31) and labor rates.
    - e. A structured approach to evaluating profit/fee
  2. Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the Contracting Officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the Contracting Officer should make a trend analysis of basic labor and materials even in periods of relative price stability.
  3. Comparison of costs proposed by the offeror for individual cost elements with:
    - a. Actual costs previously incurred by the same offeror;
    - b. Previous cost estimates from the offeror or from other offerors for the same or similar items;
    - c. Other cost estimates received in response to the MTA's request;
    - d. Independent MTA cost estimates by technical personnel; and
    - e. Forecasts or planned expenditures.
  4. Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in OMB Circular No. A-87 and FAR part 31.
  5. Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the Contracting Officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.
  6. Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.
    - a. There is no requirement for a cost analysis if price reasonableness can be established on the basis of a catalog or market price of commercial items sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
    - b. For a small purchase not exceeding two thousand five hundred dollars (\$2,500), using small purchase procedures, cost analysis is not required.
    - c. For a procurement action over two thousand five hundred dollars (\$2,500) to twenty-five thousand dollars (\$25,000) for construction and forty thousand dollars (\$40,000), using small purchase procedures or making award by formal contract, cost analysis is required unless the Contracting Officer determines that:
      - i). There is adequate pricing data available to conduct a price analysis, or



- ii). The cost of performing a cost analysis will exceed the value of the product or services to be acquired.
- d. For a procurement action over twenty-five thousand dollars (\$25,000) for construction and forty thousand dollars (\$40,000) for services, a cost analysis is required unless exempt under paragraph (a) above.
- D. The Contracting Officer may waive the requirement of (d) above by a written determination that cost data sufficient for analysis is not available, notwithstanding attempts to obtain the data and that price reasonableness has been determined using a suitable pricing technique. The contract file will document the Contracting Officer's attempt to obtain cost data and the contractor's written refusal to furnish such cost data. Waivers of the cost analysis requirement prepared in accordance with the above section must be approved by the Executive Officer, Procurement..
- E. When a waiver is deemed appropriate, the written request should be prepared in the format of a Determinations and Findings (D&F). The D&F should be prepared and signed by the Contracting Officer.

#### **15.16 Determinations And Findings Approval**

Whenever management approval of a proposed award is required by use of the Contracts Staff Summary Sheet, the Determinations and Findings (D&F) required by the section above to waive the cost analysis shall be included in the decision package. A notation shall be made stating that the cost analysis has been waived. For low dollar procurement actions where the Contracts Staff Summary Sheet is not used, the Contracting Officer shall include in the file a signed D&F waiving the cost analysis which has been approved by the Executive Officer.

#### **15.17 Contract Audit Support**

- A. The contracting officer shall request Management Audit Services audit assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. Such request shall be tailored to reflect the minimum essential supplementary information needed to be incorporated in a cost analysis performed by the buying activity. The contracting officer shall not request a separate audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect cost. At a minimum, Management Audit Services audit assistance shall be requested as follows:
  - 1. All cost reimbursement type proposals, greater than \$500,000, and the applicable threshold as specified in CalTrans local assistance procedure manual. As of January 2001, the current threshold is \$250,000, which is subject to change. The Price/Cost Analysis unit will confirm current threshold.
  - 2. The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed five hundred thousand dollars (\$500,000) in the aggregate or one hundred thousand dollars (\$100,000) for PUC § 130243 changes.





- B. MASD shall not reveal the audit conclusion or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, MASD representative may discuss statements of facts with contractor.

**15.18 Technical Analysis**

- A. When cost or pricing data are required, the Contracting Officer should request a technical analysis of proposals, asking that user, or other appropriate qualified personnel review and assess, as a minimum:
  - 1. The quantities and kinds of material proposed;
  - 2. The need for the number and kinds of labor hours and the labor mix;
  - 3. The special tooling and facilities proposed;
  - 4. The reasonableness of proposed scrap and spoilage factors; and
  - 5. Any other data that may be pertinent to the cost or price analysis.

**15.19 Profit/Fee Analysis**

- A. Profit/fee is the dollar amount over and above allowable costs that is paid to the firm for contract performance. Profit/fee analysis is required to determine reasonableness of any profit/fee included in the contract price.
- B. On negotiated awards \$40,000 and greater, contracting officers shall use MTA's weighted guidelines method for profit/fee analysis when cost analysis is performed. If the contracting officer determines use of an alternate structured approach is appropriate, the contracting officer shall justify it in writing and shall be approved by the MTA's Cost/Price Analysis Unit.
- C. Exception to performing weighted guide lines method for profit/fee analysis are as follows:
  - 1. When price analysis is performed
  - 2. When a new procurement value is under \$40,000
  - 3. When a contract change or modification meets both of following conditions:
    - 4. The change is for the same type and mix of work and the profit/fee was agreed to in the basic contract.
    - 5. The change value is less than 15 percent of the total contract value prior to the subject change.

**15.20 Additional Cost And Price Analysis Guidelines**

- A. Cost or price analysis should be conducted and documented in conjunction with each MTA procurement action, including contract modifications. The Contracting Officer must also follow the procedures under Chapter 8 Competitively Negotiated Contracts, in negotiating prices for competitively negotiated procurements. This Chapter must also be utilized in profit/fee negotiations for sole source procurements including contract modifications.



- B. The Contracting Officer should also utilize any FTA cost and price analysis guidelines provided for third party contracting.



**16.0 Purpose And Scope**

- A. This Chapter establishes MTA policy for award of contracts to responsible contractors, procedures for determining responsibility, and how information is obtained and used as a basis for a responsibility determination.
- B. Policy regarding the use of a Pre-award Survey and procedures for the conduct of a pre-award survey are described.
- C. MTA use of the System for Award Management from Federal Procurement or Non-procurement Programs is prescribed.

**16.1 Responsible Prospective Contractors**

- A. The Contracting Officer shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- B. For public works contracts, California Public Contract § 1103 defines a responsible bidder as one who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.
- C. A prime contractor whose bid is accepted on a public works contract may substitute a person as subcontractor in place of the subcontractor listed in the original bid if the Contracting Officer determines that a listed subcontractor is not a responsible contractor.
- D. The Contracting Officer shall not make an award unless he/she has determined in writing that the prospective contractor is responsible, in accordance with the provisions of this Chapter.
- E. In the absence of information clearly indicating that the prospective contractor is responsible the Contracting Officer shall make a determination of non-responsibility.
- F. To be determined responsible, a prospective contractor shall meet all of the following requirements:
  - 1. Financial resources adequate to perform the contract, or the ability to obtain them;
  - 2. Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
  - 3. A satisfactory performance record based on acceptable reference verification;
  - 4. A satisfactory record of integrity and business ethics;
  - 5. The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
  - 6. Compliance with applicable licensing and tax laws and regulations;
  - 7. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;



8. Compliance with the Affirmative Action Program requirements; and
9. Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

**16.2 Special Standards Of Responsibility**

- A. When necessary for a particular procurement or class of procurements, the Contracting Officer shall develop, with the assistance of appropriate specialists, special standards of responsibility.
- B. Special standards shall be developed when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance.
- C. The Contracting Officer shall set forth the special standards in the solicitation.
- D. The special standards set forth in the solicitation shall apply to all bidders or offerors.

**16.3 Application Of Walsh-Healey Act Policy**

The Walsh-Healey Public Contracts Act, requires that contracts entered into for the manufacture or furnishing of materials, supplies, articles, or equipment in any amount exceeding \$10,000, shall include representations and stipulations from the contractor that all persons employed by the contractor will be paid not less than minimum wage; that no person employed by the contractor will work in excess of forty hours in any week unless the contractor has entered into an agreement pursuant to the "Fair Labor Standards Act of 1938"; that no person under 16 years of age and no convict labor will be employed by the contractor; that no part of the contract will be performed, nor will any of the materials supplied, be from surroundings which are unsanitary or dangerous; that any breach or violation of any of the foregoing stipulations shall render the party liable to the United States for damages.

**16.4 Application Of Other Requirements**

- A. Except to the extent that a prospective contractor has sufficient resources, the Contracting Officer shall require, and the prospective contractor shall promptly provide, acceptable evidence of the prospective contractor's ability to obtain resources.
- B. Acceptable evidence of the prospective contractor's ability to obtain resources, as specified in the above section, shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.
- C. A prospective contractor that is or recently has been seriously deficient in contract performance may be presumed to be non-responsible. The Contracting Officer may determine the contractor to be responsible if the circumstances of the prior deficiency were properly beyond the contractor's control or if the contractor has taken appropriate corrective action.
- D. An affiliated business shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility. However, the Contracting Officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.



**16.5 Subcontractor Responsibility**

- A. Except as provided in the section below, a prospective prime contractor shall be accountable for determining the responsibility of prospective subcontractors. The prime contractor shall use the requirements and standards for responsibility set forth in this Chapter.
- B. Because the determination of a prospective subcontractor's responsibility may affect the MTA's determination of the prospective prime contractor's responsibility, a prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.
- C. When it is in the best interests of the MTA, the contracting office may independently determine a prospective subcontractor's responsibility, using the standards and requirements for responsibility set forth in this Chapter.

**16.6 Obtaining Information For Determination Of Responsibility**

- A. Before making a determination of responsibility, the Contracting Officer shall possess or obtain information sufficient to satisfy the Contracting Officer that a prospective contractor meets the applicable standards and requirements for responsibility set forth in this Chapter.
- B. The Contracting Officer shall obtain information regarding the responsibility of a prospective contractor who is the apparent low bidder or whose offer is in the competitive range. This information shall be obtained promptly after bid opening or receipt of offers.
- C. The prospective contractor shall promptly supply information requested by the Contracting Officer regarding the responsibility of the prospective contractor.
- D. If the prospective contractor fails to supply the information requested under the section above, the Contracting Officer shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be non-responsible.
- E. The Contracting Officer shall use the following sources of information, as appropriate, to support determinations of responsibility or non-responsibility:
  - 1. System for Award Management (<http://www.sam.gov>)
  - 2. Records and experience data, including verifiable knowledge of MTA personnel;
  - 3. Information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;
  - 4. Pre-award survey reports; and
  - 5. Other sources, such as publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.



- F. Contract administrators and other MTA personnel who become aware of circumstances casting doubt on a contractor's ability to perform a contract successfully shall promptly inform the Contracting Officer and furnish the relevant information in writing.
- G. The Contracting Officer should consult the List of Parties Excluded From Federal Procurement or Non-procurement Programs before soliciting an offer from, awarding a contract to, or consenting to a subcontract with a debarred or suspended contractor.

### **16.7 Determinations And Documentation**

- A. The Contracting Officer's execution of a contract shall constitute a determination that the prospective contractor is responsible with respect to that contract.
- B. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the Contracting Officer shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination.
- C. Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports and any applicable information pertaining to DBE's from Equal Opportunity Programs shall be included in the contract file.
- D. Except as provided in the section following, information, including the pre-award survey report, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the MTA.
- E. The Contracting Officer may discuss pre-award survey information with the prospective contractor before determining responsibility. At any time, after award, the Contracting Officer may discuss the findings of the pre-award survey with the company surveyed.

### **16.8 Pre-Award Surveys**

- A. The Contracting Officer may require a pre-award survey to assist in determining a prospective contractor's capability to perform a proposed contract.
- B. The Contracting Officer shall not request a pre-award survey unless circumstances justify the cost of the survey. Normally, a pre-award survey will not be required if the contemplated contract will be ten thousand dollars (\$10,000) or less, or will have a fixed price of less than one hundred thousand dollars (\$100,000) and will involve only commercial products.
- C. Before beginning a pre-award survey, the Contracting Officer shall ascertain whether the prospective contractor is debarred, suspended, or ineligible. If the prospective contractor is debarred, suspended or ineligible, the Contracting Officer shall not proceed with the pre-award survey.
- D. When a pre-award survey discloses unsatisfactory performance, the Contracting Officer shall determine the extent to which the prospective contractor plans, or has taken, corrective action.
- E. The pre-award survey report shall indicate any persistent pattern of need under prior contracts for costly and burdensome MTA assistance to the contractor (such as engineering,



inspection, or testing) that were provided to protect the MTA's interests but not contractually required.

- F. The Contracting Officer shall prepare a narrative pre-award survey report that documents the results of the pre-award survey and provides support for both the evaluation ratings and the determination of responsibility or non-responsibility.

### **16.9 System for Award Management**

- A. The Executive Officer shall use the System for Award Management before deciding whether a prospective contractor is responsible.
- B. The Contracting Officer, in implementing the policy in Section 16.1 of this Chapter, shall consult the System for Award Management before deciding whether a prospective contractor is responsible.

### **16.10 Definitions**

- A. "Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.
- B. "Affiliates," Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.
- C. "Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.
- D. "Contractor," as used in this subpart, means any individual or other legal entity that:
  - 1. Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded or reasonably may be expected to submit offers for or be awarded, an MTA contract, including a contract for carriage under MTA or commercial bills of lading, or a subcontract under a contract; or
  - 2. Conducts business, or reasonably may be expected to conduct business, with the MTA as an agent or representative of another contractor.
- E. "Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- F. "Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as in indictment.
- G. "Ineligible," as used in this subpart, means excluded from MTA contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority



other than this Manual and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Equal Employment Opportunity Acts and Executive orders, the Walsh Healey Public Contracts Act, or the Environmental Protection Acts and Executive orders.

- H. "Legal proceedings" means any civil judicial proceeding to which the MTA is a party or any criminal proceeding. The term includes appeals from such proceedings.
- I. "Parties Excluded from Procurement Programs," formerly referred to as the Consolidated List of Debarred, Suspended, and Ineligible Contractors, means a list compiled, maintained, and distributed by the General Services Administration, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement Programs is contained with the lists of Parties Excluded from Federal Procurement or Non-procurement Programs.
- J. "Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- K. "Suspension," as used in this subpart, means action taken by a suspending official to disqualify a contractor temporarily from MTA contracting and MTA approved subcontracting; a contractor so disqualified is "suspended".

#### **16.11 Effect Of Listing**

- A. Contractors debarred, suspended or proposed for debarment are excluded from receiving contracts, and the MTA shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the Chief Executive Officer determines that there is a compelling reason for such action. Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the MTA as agents or representatives of other contractors.
- B. Contractors included in the System for Award Management as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. The MTA shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.
- C. Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.
- D. After the opening of bids or receipt of proposals, the Contracting Officer shall review the System for Award Management (sam.gov).
- E. Bids received from any listed contractor in response to an Invitation for Bids shall be entered on the abstract of bids, and rejected unless the Chief Executive Officer determines, in writing, that there is a compelling reason to consider the bid.





- F. Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the Chief Executive Officer determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the Contracting Officer may, but is not required to, consider such proposals, quotations or offers.
- G. Immediately prior to award, the Contracting Officer shall again review the System for Award Management to ensure that no award is made to a debarred contractor.

#### **16.12 Continuation Of Current Contracts**

- A. Notwithstanding the debarment, suspension, or proposed debarment of a contractor, the MTA may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the Chief Executive Officer directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.
- B. The MTA shall not review or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the Chief Executive Officer determines, in writing, that compelling reasons exist for renewal or extension.

#### **16.13 Restrictions On Subcontracting**

When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to MTA consent, Contracting Officers shall not consent to subcontractors with such contractors unless the Chief Executive Officer states in writing the compelling reason for this approval action.

#### **16.14 Certification Regarding Debarment Or Ineligibility**

- A. The Contracting Officer will assure compliance with Federal guidelines by requiring contractor and subcontractor certificates regarding debarment or ineligibility.
- B. When an offeror, in compliance with the provision entitled "Debarred or Ineligible Parties" indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the Contracting Officer shall request such additional information from the offeror as may be deemed necessary in order to make a determination of the offeror's responsibility.
- C. Offerors who do not furnish such information as may be requested by the Contracting Officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror non-responsible.

#### **16.15 California Department Of Labor Standards Enforcement Debarments**

- A. Under California law, whenever a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be either in violation of certain provisions of law, with intent to defraud, or in willful violation of those provisions of law, the contractor or



subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible to bid on or to receive a public works contract for specified periods of time.

- B. The MTA may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project, as specified, to bid on, be awarded, or perform work as a subcontractor on, a public works project. Every MTA public works contract shall contain a provision regarding this prohibition.
- C. The list of debarred contractors may be found at <http://www.dir.ca.gov/DLSE/Debar.html>

#### **16.16 MTA Debarment and Suspension Ordinance**

The MTA Board has adopted a Contractor Debarment and Suspension Ordinance. The ordinance adopts a detailed process for debarment which fully meets the procedural due process requirements for such a sanction. The ordinance also provides for the suspension of a contractor, as a temporary measure, when the contractor has committed an act which would support debarment. The Ordinance is posted on the Procurement website <http://www.metro.net/images/MTA%20Administrative%20Code%20Enactment.pdf>

**17.0 Policy**

- A. MTA shall specify bonding, in compliance with applicable FTA or State of California requirements for construction or facility improvement contracts or subcontracts, which adequately protects the interests of the FTA and MTA
- B. For non-construction contracts, performance-bonding requirements are discouraged except where applicable law or regulation provides for such bonding and MTA determines that such a requirement is necessary and documents its procurement records regarding such necessity.

**17.1 Purpose And Scope**

This Chapter prescribes MTA requirements for contractor bid bonds or other security, for performance and payment bonds, and for contractor insurance, where required. This Chapter also provides guidelines for the Contracting Officer and other MTA officials to handle bonding and insurance issues.

**17.2 General Provisions**

- A. The Executive Officer or any Contracting Officer may require any of the following types of security for any solicitation or contract subject to this Manual, other than a small purchase, regardless of the estimated amount of the contract:
  - 1. Bid bonds;
  - 2. Other bid or proposal security;
  - 3. Construction performance and payment bonds; and
  - 4. Performance or payment bonds or other security on non-construction contracts.

**17.3 Types Of Bonds And Securities**

- A. Bid Security. A firm commitment such as a bid bond executed by an admitted surety insurer, cash or certified or cashiers' check accompanying a bid as assurance the Bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. Performance Bond. A bond executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- C. Payment Bond. A bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in all public works contracts in excess of twenty-five thousand dollars (\$25,000).

**17.4 General Requirements**

- A. The Contracting Officer shall determine whether security of any type is required by law or would be in the best interests of the MTA in all contracts other than small purchases. In non-construction contracts, the Contracting Officer shall consider the following factors:



1. Whether MTA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (such as in retention of salvaged material);
  2. When a contractor sells assets to or merges with another business entity, whether the MTA (after recognizing the other entity as the successor in interest) needs assurance that it is financially capable;
  3. Whether substantial progress payments are to be made before delivery of end item starts;
  4. Whether the contract is for dismantling, demolition, or removal of improvements; or
  5. Any other factors which might favor the use of security to protect the best interests of the MTA.
- B. A payment security shall be required only when a performance security is required and the use of the payment security is the best interests of the MTA, unless the Contracting Officer determines in writing that either type of security would, by itself, protect the best interests of the MTA.
- C. When a security is required by the Contracting Officer under this Chapter, the Contracting Officer may accept any of the following types of security:
1. A bond provided by a surety in accordance with the Securities section below;
  2. A certified check or irrevocable letter of credit issued by an insured financial institution in the equivalent amount or the security; or
  3. United States government securities that are assigned to the MTA which pledge the full faith and credit of the United States.
- D. The Contracting Officer shall determine a contractor's responsibility even though security has been or can be obtained.
- E. A solicitation shall not bar bidders or offerors from using any of the types of surety or security permitted by this Chapter, unless otherwise prohibited by law or regulation.
- F. When required by Federal law or regulation or as a condition of Federal assistance, the Contracting Officer shall require security, and the solicitation shall state the requirement.

### **17.5 Construction Bid Bonds And Other Securities**

- A. When the MTA's independent price estimate for a construction contract exceeds twenty-five thousand dollars (\$25,000), the Contracting Officer shall require a bid security for the invitation for bids or, if appropriate, for the request for proposal. However, the Contracting Officer may decide against requiring a bid security for procurements on a case by case basis should circumstances indicate that the benefits of not requiring a bid security outweigh the risks.
- B. When the MTA's independent price estimate for a construction project is not more than twenty-five thousand dollars (\$25,000), the Contracting Officer may require a bid security.



- C. The bid security for a construction contract shall be in the amount equal to at least ten percent (10%) of the amount of the bid or price proposal. The bid security for non-construction contracts shall be in an amount set by the Contracting Officer.
- D. When a bid security is required, the solicitation shall contain the following:
  - 1. A statement that bid security is required;
  - 2. Notice that the bid security will remain in effect for as long as the bid or proposal is required to remain effective; and
  - 3. Sufficient information to allow bidders or offerors to determine the amount of the required bid security.
- E. No action shall be taken against the bid security of a bidder or offeror that is permitted to withdraw a bid or proposal prior to award due to a mistake in the bid or proposal, in accordance with the applicable provisions of this Manual.

#### **17.6 Noncompliance With Bid Security Requirements**

- A. If a bid fails to comply with the bid security requirements set forth in the solicitation, the Contracting Officer shall reject the bid.
- B. If the bid security becomes inadequate as a result of the correction of a mistake, the bid may be accepted if the bidder agrees to increase the bid security to the level required for the corrected bid.

#### **17.7 Performance And Payment Security**

- A. The Contracting Officer shall require a contractor to furnish performance and payment bonds or other security on any construction contract when the MTA's independent estimate of the cost of the contract exceeds twenty-five thousand dollars (\$25,000), in accordance with the provisions of this Section.
- B. The Contracting Officer may require a contractor to furnish a payment and/or performance bond or other security for any construction or non-construction contract, regardless of amount, when the Contracting Officer determines that the security is necessary or advisable to protect the interests of the MTA. The security shall be furnished in accordance with the provision of this Section.
- C. The amount of the performance security shall be one hundred percent (100%) of the original contract price. The Contracting Officer shall state the amount or percentage in the solicitation.
- D. The Contracting Officer shall require additional performance security when a contract price is increased. The increase in performance security shall equal one hundred percent (100%) of the increase in the contract price.
- E. The Contracting Officer may require additional performance security by directing a contractor to increase the original sum of the existing security to obtain an additional security.



- F. The amount of the payment bond shall be not less than one hundred percent (100%) of the total amount payable by the terms of the contract.
- G. When a contract price is increased, the MTA may require additional payment security in an amount adequate to protect suppliers of labor and material.
- H. When performance or payment security is required, the solicitation shall contain the following:
  - 1. A statement that security is required;
  - 2. The amount of the security expressed as a fixed sum or percentage of the contract price; and
  - 3. The deadline for submitting acceptable security.
- I. In construction contracts, the contractor shall furnish all performance and payment bonds (or other securities) by the deadline for submitting bonds (or other securities) as stated in the solicitation. The bonds (or other securities) must be submitted before a notice to proceed is issued.
- J. No performance security or payment security shall be required after the contract has been executed if it was not specifically required in the contract, except when determined necessary by the Contracting Officer for a contract modification.
- K. If the Contracting Officer uses a letter contract to allow the contractor to proceed with the work before execution of the definitive contract, the letter contract shall contain a clause, approved by the Executive Officer that no payments shall be made under the letter contract until the required payment and performance securities have been received.

### **17.8 Surety Bonds And Other Securities**

- A. A new surety bond covering all or part of the obligation on a security previously approved may be substituted for the original security, if approved by the Contracting Officer.
- B. When a new surety bond is approved, the Contracting Officer shall notify the principal and surety on the original bond of the effective date of the new bond.
- C. When a payment security has been provided, the Contracting Officer shall, upon request, furnish a copy of the bond to any subcontractor or supplier who has furnished or been requested to furnish labor or material for a contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or material and have not been paid.
- D. If, after completion of the work of a contract requiring payment and performance security, the MTA receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or suppliers, the Contracting Officer shall withhold final payment. However, the surety shall agree to hold the MTA harmless from any liability resulting from withholding the final payment. The Contracting Officer shall authorize final payment upon agreement between the contractor and surety or upon a judicial or other binding determination of the rights of the parties.



- E. If the amount of security exceeds the surety's underwriting limit, as established by the U. S. Department of the Treasury or a list established by the MTA, the security shall be acceptable only if:
  - 1. The amount that exceeds the specified limit is coinsured or reinsured; and
  - 2. The amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or re-insurer.

### **17.9 Sureties**

- A. The Contracting Officer shall obtain adequate security for bonds (including coinsurance and reinsurance agreements), required or used with a contractor for supplies or services, including construction.
- B. A bond security may be obtained from a corporate surety.
- C. Each corporate surety shall be a company authorized to do business in the State of California.
- D. The Contracting Officer shall determine the acceptability of all sureties.

### **17.10 Stop Notices And Release Bonds For Stop Notices**

- A. The stop notice procedure authorized by California Civil Code 3169 et seq., allows subcontractors, material suppliers and other persons involved in MTA Public Works contracts who have claims related to non-payment for their work or supplies to stop MTA payment to the general contractor until the claim is resolved. Processing Stop Notices are in accordance with Civil Code affecting contracting Payment in Chapter 18 of this Manual.
- B. The posting of a stop notice bond by the prime contractor in response to a stop notice is a procedure authorized by California Civil Code 3196.
- C. The stop notice is directed to the Contracting Officer.

### **17.11 Substitution Of Securities For Retention**

California Public Contracts Code 22300 allows contractors to submit bonds or letters of credit as a substitute for the MTA retaining monies from its payment.

### **17.12 Insurance Requirements**

- A. Contractors providing goods and services shall be required to carry sufficient insurance to protect the MTA from third party lawsuits for personal injury (including death) and property damage. Insurance may also be required for damage to MTA property and for errors and omissions in the provision of professional services.
- B. The following types of procurement actions require Risk Management's review:
  - 1. All Operations and Non-Operational Construction Contracts
  - 2. All Professional Services Contracts
  - 3. All contracts where work will be performed within "50 feet" of our railroads
  - 4. All Environmental Contracts, to include engineering services



5. All procurement contracts and/or purchase agreements where outside vendors will be conducting work or performing installation services on MTA premises.
  6. All procurement contracts and/or purchase agreements where outside vendors will be delivering products to a MTA facility.
- C. The Contracting Officer in coordination with the MTA's Risk Management Manager shall determine insurance types and limits.
  - D. MTA contractors shall comply with insurance requirements imposed by state and local governments.
  - E. The contractor and subcontractor will be required to carry general liability, workmen's compensation, and automobile insurance on construction contracts for other programs. The contracting officer will determine the specifications for these contracts in coordination with the MTA's Risk Management Manager.
  - F. In certain limited cases, the MTA will permit the contractor to substitute an approved program of self-insurance. The contractor must demonstrate that he/she can sustain the potential losses being self-insured.
  - G. Other than construction contracts, the Contracting Officer shall include insurance and indemnification provisions in equipment, supply, and services contracts in accordance with procedures established by the MTA's Risk Management Manager and approved by the Executive Officer, Office of Procurement and Distribution.

#### **17.13 Requirement For Bonds To Be Executed By An Admitted Surety Insurer**

- A. California Code of Civil Procedure § 995.311 calls for any bond required on a public works contract to be executed by an admitted surety insurer.
- B. The MTA has a duty to verify that an admitted surety insurer executes the bond. The contract administrator shall print out information from the website of the Department of Insurance (<http://www.insurance.ca.gov/docs/FS-CompanyProfiles.htm>) confirming that the surety is an admitted surety insurer and attach it to the bond.





**18.0 Purpose And Scope**

This Chapter provides guidelines for all MTA officials involved in the contracting process pertaining to contract payments.

**18.1 Advance Payments**

It is the expressed policy of the MTA not to make advance payments on any contract, except for contracts for the payments of rents, tuition, insurance premiums, and subscriptions to publications. For federally funded contracts, FTA does not authorize and will not participate in funding payments made by a grantee to a contractor prior to the incurrence of costs by the contractor.

**18.2 Contract Payments**

The MTA shall compensate its contractors for their allowable costs incurred to perform contract work. Except for approved changes to the contract, the contractor will not be reimbursed for costs incurred in excess of the Firm Fixed Price, Total Estimated Cost and Fee, Time and Material amount, or contract funding limitations specified. The contractor shall submit invoices to the MTA and maintain auditable records.

**18.3 Fixed Price Contracts - Progress Payments**

- A. Each Fixed Price contract, that contains a progress payment provision, will include a Progress Payment Schedule. The Schedule will list the deliverables agreed to between the contractor and the MTA that are due at each scheduled contract milestone. Progress Payments will consist of payment for the percentage of work completed on each deliverable that had not been previously included in a previous invoice. The percentage of work completed will be verified by the MTA.
  - 1. For the purpose of making progress payments and determining the limitations on progress payments, the Contracting Officer may use the following in determining the contract price:
    - a. Under firm-fixed-price contracts, the contract price shall be the current contract price plus any unpriced modifications for which funds have been obligated;
    - b. If the contract is re-determinable or subject to economic price adjustment, the contract price shall be the initial price until modified;
    - c. Under a fixed-price incentive contract, the contract price shall be the target price plus any unpriced modifications for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the Contracting Officer may provisionally increase the price up to the ceiling or maximum price; and
  - 2. The Contracting Officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.
  - 3. Bids conditioned on progress payments when the solicitation does not provide for progress payments shall be rejected as non-responsive.



4. A Contracting Officer may provide for customary progress payments if the contractor will not be able to bill for delivery of products (or other performance milestones) for a substantial time (not less than four (4) months) after work must begin and, during the pre-delivery period, will make expenditures for contract performance that have a significant impact on the contractor's working capital.
5. A Contracting Officer shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice, such as the following:
  - a. Subsistence;
  - b. Clothing;
  - c. Standard commercial items not requiring a substantial accumulation of predelivery expenditures by the contractor.

**18.4 Consideration For Progress Payments**

- A. There should be no requirement for a separate consideration for providing progress payments, if coverage is included in the terms of the contract when awarded.
- B. Adequate new consideration shall be required when the contract, during contract performance, is amended to provide progress payments.
- C. When adequate new consideration is required pursuant to the above section, the contractor may provide new consideration by monetary means (such as reduction in contract price) or non-monetary means (such as incorporating terms in the contract amendment conferring a new benefit to the MTA).
- D. Fair and reasonable consideration shall approximate the amount by which the price would have been smaller if the provision for progress payments had been included in the initial contract.

**18.5 Time And Material Contracts - Contract Payments**

- A. As usual herein the term "Time and Material" is defined as a contract that provides for acquiring services or goods on the basis of:
  1. Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
  2. Good and expenses at direct cost only with no overhead profit or fee allowed.
- B. Time and Material rates are allowable only to the extent that any individual rate complies with the Compensation and Payment provisions in the contract.



**18.6 Cost Reimbursable And Task Order Contracts - Contract Cost Payments**

- A. The MTA shall make payments to its Contractors when requested as work progresses, but not more often than once per month, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulations (FAR) in effect on the effective date of the contract and the terms of the contract.
- B. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing a contract.

**18.7 Contract Fee Payments**

- A. The MTA shall pay the Contractor for performing its contracts a fee determined as provided in the contract.
- B. In the case of a Fixed Fee under a Cost Plus Fixed Fee (CPFF) contract, the contractor will earn the fixed fee for the Contract or Task Order (Contract Work Order – CWO) by meeting the milestones for deliverables. The contractor will not earn Fixed Fee for any portion of the work under the Contract/CWO not completed as required in the Contract/CWO Schedule. The MTA shall pay a Fixed Fee only for acceptable deliverables. Deliveries failing to meet Schedule and/or quality as required by the Contract/CWO shall not earn full Fixed Fee.
- C. For Incentive Fee contracts, the contractor will earn the target incentive fee for the Contract by meeting the milestones for deliverables. However, when the Contracting Officer considers that the performance or cost indicates that the Contractor will not achieve target, the MTA shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the MTA may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee.

**18.8 Limitation Of Cost Or Funds**

- A. If a Contracting Officer learns that a partially funded contract will receive no further funds, the Contracting Officer shall promptly give the contractor notice of the decision not to provide funds.
- B. The Contracting Officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the budget authority allocated and encumbered, shall promptly obtain information about funding and programming pertinent to the continuation of the contract and notify the contractor in writing of one (1) of the following:
  - 1. That additional funding is available or the estimated cost has been increased in a specified amount;
  - 2. That the contract will not be further funded, and that the contractor shall submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;
  - 3. That the contract will be terminated; or



4. That the MTA is considering whether to allot additional funds or increase the estimated cost, that the contractor is entitled by the contract terms to stop work when the funding or cost limit is reached, and that any work beyond the funding or cost limit will be at the contractor's risk.
- C. The Contracting Officer may issue a change order, a direction to replace defective items or work, or a termination notice without immediately increasing the funds available.
- D. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the Contracting Officer shall ensure availability of funds for directed actions.
- E. The Contracting Officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

### **18.9 Limitation Of Cost Notice**

- A. Prior to expenditure of seventy-five percent (75%) of the contract Estimated Cost, the Contractor shall notify the Contracting Officer when the Contractor believes that the cumulative expenditure of reimbursable cost will reach one hundred percent (100%) of the Total Estimated Cost. Notice shall include the following:
  1. Date on which the Contractor expects to reach the 100% level; and
  2. Contractor's best judgment of whether the work can be completed within the Total Estimated Cost and/or approved schedule.
  3. If the work cannot be completed within the Total Estimated Cost and/or schedule, the Contractor shall provide its best estimate of (1) costs and time to complete the work, (2) proposed changes to the work scope which would allow the contract to be completed within the Total Estimated Cost and/or schedule; and (3) a statement setting forth in detail the reasons why the work cannot be completed within the Total Estimated Cost and/or schedule.

### **18.10 Administration - Supervision Of Contract Payments**

- A. The extent of contract payments supervision, by prepayment review or periodic review, may vary, according to the contractor's experience, performance record, reliability, quality of management, and financial strength, and with the adequacy of the contractor's accounting systems and controls.
- B. Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect the interests of the MTA.
- C. So far as is practicable, all problems relating to costs that are likely to create disagreements in future administration of the contract shall be identified and resolved at the inception of the contract.
- D. The Contracting Officer shall, before approving contract payments, determine the following:
  1. That the MTA is otherwise protected against loss by additional protective provisions in the contract; and



2. The contractor's accounting system and controls are adequate for proper administration of contract payments.
- E. When the reliability of the contractor and the adequacy of the contractor's accounting system has been established pursuant to this Manual, the Contracting Officer may approve contract payment requests.
- F. The Contracting Officer may request an audit review of the contractor's request for contract payments when there is reason to question the reliability or accuracy of the contractor's certification, or if the Contracting Officer believes that the contract will involve a loss.
- G. Contract payments made under a requirements contract or an indefinite quantity contract shall be administered under each individual order as if the order constituted a separate contract. The Contracting Officer may treat a group of orders as a single unit for administration of contract payments.

### **18.11 Review Or Audit Of Contract Payments**

- A. The Contracting Officer shall include provisions, approved by the Executive Officer, giving the MTA the right to conduct post-payment reviews or audits at the discretion of the Contracting Officer, including reviews or audits to determine the following:
  1. Whether the contract payments are fairly supported by the value of work accomplished;
  2. Whether the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or the contractor has adequate resources to complete the contract; and
  3. Whether there is any reason to doubt the adequacy or reliability of the contractor's accounting system, controls, or payment certification.
- B. The Contracting Officer shall conduct contract payment reviews periodically, at intervals of six (6) months or less, and may conduct reviews or request audits by Management Audit Services at any time or upon receipt of any request for a contract payment.

### **18.12 Suspension Or Reduction Of Progress Payments**

- A. In each contract that provides for progress payments, the contracting office shall include provisions, approved by the Executive Officer, which assert the MTA's right to reduce or suspend progress payments, or increase the liquidation rate, as appropriate, in the following circumstances:
  1. If the contractor fails to maintain an efficient and reliable accounting system and controls that are adequate for the proper administration of progress payments;
  2. If the Contracting Officer determines that contract performance, including full liquidation of progress payments, is endangered by the contractor's financial condition or by a failure to make progress on the performance of the contract;
  3. If the inventory allocated to the contract exceeds reasonable requirements;
  4. If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business;



5. If the un-liquidated progress payments exceed the fair value of undelivered work under the contract; and
  6. If the sum of the total costs incurred under a contract plus the estimated costs to complete performance are likely to exceed the contract price.
- B. Actions under this section shall only be taken in accordance with the contract terms and only after the following:
1. The Contracting Officer gives notice to the contractor of the intended action and provides an opportunity for discussion; and
  2. The Contracting Officer evaluates the effect of the action on the contractor's operations, based on the contractor's financial condition, projected case requirement, and the existing or available credit arrangements.
- C. The Contracting Officer shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.
- D. In all cases, the Contracting Officer shall document the contract file with evidence supporting the Contracting Officer's decisions.

### **18.13 Liquidation Rates**

- A. Contract payments shall be recouped by the MTA through deduction of liquidations from payments that would otherwise be due the contractor for completed contract items.
- B. To determine the amount of the liquidation, the Contracting Officer shall apply a liquidation rate to the contract price of contract items delivered and accepted. This rate shall always be used at the beginning of a contract, and shall apply throughout the period of contract performance unless the Contracting Officer adjusts the liquidation rate at a different rate negotiated with the contractor and determined to be equitable based upon the contractor's financial circumstances at that time.
- C. If the liquidation rate is increased under the section above, the Contracting Officer shall ensure that the alternate liquidation rate is high enough to result in the recoupment by the MTA of the applicable progress payments on each billing.
- D. Any change in the liquidation rate shall be supported by documentation included in the contract file.

### **18.14 Protection Of MTA Title**

- A. The Contracting Officer shall include a contract provision, approved by the Executive Officer, which provides that the MTA shall receive title to all of the materials, work-in-process, finished goods, and other items of property under the contract for which progress payments are made.
- B. The Contracting Officer shall ensure that MTA title is not comprised by other encumbrances or liens.
- C. The Contracting Officer shall require additional protective provisions, if deemed necessary, to establish and protect the MTA's title.



**18.15 Risk Of Loss**

- A. The Contracting Officer shall include a provision, approved by the Executive Officer, with the contract payment provisions of the contract, which provides that, except for normal spoilage, the contractor shall bear the risk of loss, theft, destruction, or damage to property affected by the provision, unless the MTA has expressly assumed that risk.
- B. The contractor shall be obligated to repay the MTA the amount of payments received based on costs allocable to the property if the loss occurred prior to the MTA having assumed the risk of loss.
- C. The contractor shall not be obligated to pay for the loss of property for which the MTA has assumed the risk of loss.

**18.16 Contract Payments To Subcontractors**

- A. In each contract providing for contract payments, the Contracting Officer shall include a provision, approved by the Contracting Officer, which requires the contractor to include in the terms of each subcontract, the substance of the payments provisions in the prime contract, modified to indicate that the contractor (not the MTA) awards the subcontract and administers the payments.
- B. If the contractor makes payments to a subcontractor under a cost-reimbursement prime contract, the Contracting Officer shall accept the progress payments as reimbursable costs of the prime contract only under the following conditions:
  - 1. When the payments are made under the standards in the section on Contract Payments Based on Costs (Section 18.2);
  - 2. When the subcontract contains contract payment terms as required under the section above.

**18.17 Contract Debt Determination And Collection**

- A. In determining the amount of any contract debt, the Contracting Officer and the Executive Officer shall fairly consider both the MTA's claim and any contract claims by the contractor against the MTA.
- B. The Contracting Officer, or other official designated to administer the collection of contract debts and applicable interest, shall use all proper means available for collecting debts as rapidly as possible.
- C. Except in cases in which an agreement has been entered into for deferment of collections, or when bankruptcy proceeding against the contractor have been initiated, the contractor shall liquidate the debt by either of the following methods:
  - 1. Cash payment in a lump sum, on demand; or
  - 2. Credit against existing payments due to the contractor.



**18.18 Demand For Payment Of Contract Debt**

- A. The Contracting Officer shall make a demand for payment as soon as the amount of contract debt due has been computed. If the debt arises from excess costs for a default determination, the Contracting Officer shall make the demand without delay.
- B. The demand shall include the following:
  - 1. A description of the debt, including the debt amount;
  - 2. If applicable, notification that any amount not paid within thirty (30) days from the date of the demand, or from any earlier date specified in the contract, shall bear interest at the rate set forth in the section on Contract Debt Interest Charges and Credits (Section 18.22);
  - 3. A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practical or if the amount is disputed; and
  - 4. Identification of the Contracting Officer or other official designated for determining the amount of the debt and for its collection.

**18.19 Negotiation Of Refund To Resolve Contract Debt**

- A. The Contracting Officer shall attempt to expeditiously resolve the amount of contract debt and refund through negotiation with the contractor.
- B. If the Contracting Officer and contractor agree upon a refund to the MTA, the Contracting Officer shall promptly write a memorandum to document the agreement and the contract debt.
- C. The Contracting Officer shall sign the memorandum for the MTA, and the contractor.
- D. The Contracting Officer shall execute a contract modification to adjust the contract in accordance with the memorandum of agreement.

**18.20 Setoff And Withholding Of Payments**

- A. If a disbursing officer is the responsible official for collection of a contract debt, or is notified of the debt by the Contracting Officer, or other officer designated to collect the debt, and has contractor invoices on hand for payment, the disbursing officer shall make an appropriate setoff.
- B. The disbursing officer shall give the contractor written notice of the setoff, including a statement of the reasons for the setoff. The notice shall be delivered to the contractor or mailed by certified mail, return receipt requested.
- C. To the extent that the setoff reduces the debt, the explanation of the setoff shall indicate the extent to which the demand amount described in this section is reduced.
- D. During the thirty days following the issuance of a demand pursuant to this Chapter, the Contracting Officer shall consider the advisability of withholding payments otherwise due to the contractor, based on the circumstances of each individual case.





- E. If, within thirty days of the issuance of the demand made pursuant to this Chapter, the contractor has neither completed payment nor requested deferment, the Contracting Officer may immediately withhold any contract payments due up to the amount of the debt plus interest.

### **18.21 Deferred Payment Agreements**

- A. The arrangement for deferred payment shall be in the form of a written agreement providing for deferred payment of the debt. The agreement shall be signed by the Contracting Officer and the contractor.
- B. The deferred payment agreement shall include appropriate covenants and securities, in a form approved by the Executive Officer, and shall be limited to the shortest practicable maturity.
- C. At a minimum, the Contracting Officer shall include the following in the deferred payment agreement;
  - 1. A description of the debt;
  - 2. The date of the first demand for payment;
  - 3. Notice of interest charges pursuant to this Chapter;
  - 4. The method for making payments and the office to which the payments shall be made;
  - 5. A requirement for the contractor to submit financial information requested by the MTA, and for reasonable access to the contractor's records and property by MTA representatives; and
  - 6. Provisions for termination of the deferred payment arrangement and acceleration of the maturity of the debt if the contractor defaults on the deferred payment agreement or the underlying contract, or if bankruptcy or insolvency proceedings are instituted by or against the contractor.
- D. If the contractor's appeal of the debt is pending, the deferred payment agreement shall include a provision, approved by the Executive Officer, requiring the contractor to diligently prosecute the appeal and to pay the debt in full either when the appeal is decided or when the contractor and the MTA agree on the debt amount.
- E. If the contractor does not plan to appeal the debt or file an action under the disputes clause of the contract, the deferred payment agreement shall include a specific schedule of payments. The deferred payment agreement shall include a provision, approved by the Executive Officer, allowing the contractor to make prepayments without prejudice, for refund of overpayments, and for crediting of interest.

### **18.22 Contract Debt Interest Charges And Credits**

- A. The Contracting Officer shall apply interest charges to any contract debt unpaid after thirty (30) days from the issuance of a demand, unless either of the following applies:
  - 1. The contract specifies another due date or procedure for charging or collecting interest; or



2. The contract is excluded under the section below.

Interest on contract debt shall be made an element of each deferred payment agreement.

- B. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on whichever of the following dates applies:
  1. The date on which the designated office received payment from the contractor;
  2. The date of issuance of an MTA check to the contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
  3. The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the contractor.
- C. An equitable interest credit shall be applied under the following circumstances:
  1. When the amount of debt initially determined is subsequently reduced;
  2. When the collection procedures used result in an excess collection of the debt due; or
  3. When the Contracting Officer or other official designated to collect the debt determines that the MTA has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, unless an interest penalty was paid for the late payment.
- D. The following categories of contracts may be excluded from interest charges:
  1. Small purchases;
  2. Contracts without any provision for profit or fee with a nonprofit organization.

**18.23 Contract Funding**

- A. No Contracting Officer or other MTA employee shall make or authorize an encumbrance or expenditure in advance of appropriations or which exceeds the budget authority available under a current appropriation.
- B. Before executing any contract, the Contracting Officer shall obtain certification from an official designated by the Chief Executive Officer that the amount of the contract does not exceed the amount of unencumbered budget authority as of the date on which the contract is executed.
- C. For purposes of this section, "unencumbered budget authority" shall mean that portion of an appropriation which has been allocated to the object of the procurement and which has not been reallocated to another purpose, committed to any other procurement, or expended.
- D. If the contract provides for expenditures in excess of the amount of unencumbered budget authority, the Contracting Officer shall not sign the contract unless the contract contains a provision, approved by the Executive Officer, which expressly provides that the portion of the contract requiring payment of any amount in excess of available budget authority is conditioned upon the appropriation or allocation of additional budget authority.



- E. If the contract provides for expenditures in a future fiscal year, the Contracting Officer shall not sign the contract unless the contract contains a provision, approved by the Executive Officer, which expressly provides that the portion of the contract requiring expenditures in a future fiscal year is conditioned upon the appropriation of budget authority for that fiscal year.
- F. Before execution of a contract, the Contracting Officer shall ensure that the appropriate amount of allocated budget authority is encumbered to cover the cost of the contract.
- G. Budget authority shall be encumbered as follows:
  - 1. In an amount sufficient to cover the price or target price of a fixed-price contract, or the price of that portion of the contract to be performed in the current fiscal year; or
  - 2. In an amount sufficient to cover the estimated cost and any fee of a cost-reimbursement contract, or that portion of the estimated cost and fee applicable to the current fiscal year.
- H. For contracts, which extend to a fiscal year for which appropriations have not been made or allocated at the time of contract execution, the Contracting Officer shall ensure that the appropriate amount of allocated budget authority is encumbered when the appropriation is made.
- I. A contractor shall not perform services or deliver supplies under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available. The Contracting Officer shall not give notice to the contractor until the appropriate amount of budget authority has been encumbered.
- J. The MTA shall not accept supplies or services under a contract conditioned upon the availability of funds until the Contracting Officer has given written notice to the contractor that funds are available.

#### **18.24 Assignment Of Contract Payments By Contractors**

- A. A contractor may assign moneys due or to become due under a contract if all the following conditions are met:
  - 1. The contract specifies payments aggregating one thousand dollars (\$1,000) or more;
  - 2. The assignment is made to a bank, trust company, or other financing institution; and
  - 3. The contract does not prohibit the assignment.
- B. Unless otherwise expressly permitted in the contract, an assignment shall cover all unpaid amounts payable under the contract.
- C. Unless expressly permitted in the contract, an assignment may be made only to one (1) party, except that any assignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in the financing of the contract.
- D. Unless expressly permitted in the contract, an assignment of contract payments shall not be subject to further assignment.



- E. The assignee shall be required to send written notice of assignment together with a true copy of the assignment instrument to the following, in accordance with the section above:
  - 1. The Contracting Officer
  - 2. The Surety on any bond applicable to the contract; and
  - 3. The Disbursing Officer designated in the contract to make payment.
- F. A contract may prohibit the assignment of contract payments if the Contracting Officer determines that the prohibition is in the best interests of the MTA.

### **18.25 Procedures For Assignment Of Contract Payments**

- A. Assignments by corporations shall be executed by an authorized representative of the corporation and attested to by the secretary or an assistant secretary of the corporation.
- B. If the contractor is a partnership, the assignment may be signed by one (1) partner if it is accompanied by an acknowledged certification that the signer is a general partner of the partnership who is authorized to sign the assignment on behalf of all partners.
- C. If the contractor is an individual, that individual shall sign the assignment, and the signature shall be acknowledged before a notary public or other person authorized to administer oaths.
- D. The assignee shall forward to each person identified in this section an original and three (3) copies of the notice of assignment together with one (1) true copy of the instrument of assignment.
- E. In examining and processing notices of assignment and before acknowledging their receipt, the Contracting Officer shall ensure that the following conditions have been met:
  - 1. The contract has been properly approved and executed;
  - 2. The contract is one under which claims may be assigned; and
  - 3. The assignment covers only money due or to become due under the contract.
- F. A release of an assignment shall be required whenever either of the following occur:
  - 1. There has been a further assignment or reassignment; or
  - 2. The contractor wishes to re-establish its right to receive further payments after the contractor's obligations to an assignee have been satisfied and a balance remains due under the contract.
- G. The assignee, under a further assignment or reassignment in order to establish a right to receive payment from the MTA shall file the following with the persons listed in this Chapter:
  - 1. Written notice of release of the contractor by the assignee;
  - 2. A copy of the release instrument;
  - 3. Written notice of the further assignment or reassignment; and
  - 4. A copy of the further assignment or reassignment instrument.



- H. If the assignee releases the contractor from an assignment of contract payments, the contractor, in order to establish a right to receive payment of the balance due under the contract, shall file a written notice of release together with a true copy of the release of assignment instrument with the persons listed in this Chapter.
- I. The receipt of a notice of release of assignment or an official acting on behalf of that recipient, shall acknowledge receipt of the notice in writing.

### **18.26 Prompt Payment To Subcontractors**

- A. A prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account for the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.
- B. In accordance with 49 CFR Part 26 § 26.29, the MTA shall include in all contracts above the small purchase threshold a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the receipt of each payment the MTA makes to the prime contractor. The clause will also require the prompt return of retainage payments from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed.

### **18.27 MTA Payment Process**

- A. The MTA will promptly process all contract payments with necessary controls to assure compliance with all contract terms and conditions in accordance with internal procedures authorized by the Chief Executive Officer.
- B. MTA Contracting Officers will clearly specify in solicitations and contracts, the form and content of an acceptable invoice, including a requirement that invoices be sequentially numbered, that they contain a date and contract number and the services for which they are invoicing, the period of performance being invoiced, and to whom, within the MTA, invoices are to be sent.
- C. MTA Contracting Officers will require that final invoices be clearly marked FINAL, and that those invoices cite the amount of the contract, the amount previously paid and the balance due.
- D. MTA Office of Accounting will maintain summary payment information in the appropriate contract payment system records.
- E. MTA Office of Accounting will provide the Contracting Officer with copies of paid invoices and copies of final invoices upon receipt from contractor or assure that such payment records are made available to the Contracting Officer as part of the appropriate payment information system.

**18.28 Payment Of Retention On Public Works Contracts**

Pursuant to California Public Contract Code § 7107, within 60 days after the date of completion of the work of improvement, the MTA shall release any retention withheld. In the event of a dispute between the MTA and the original contractor, the MTA may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

**18.29 Progress Payments On Public Works**

In accordance with California Public Contract Code § 20104.50, the MTA shall make progress payments within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the MTA fails to make timely payment, the MTA shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (s) of Section 685.010 of the Code of Civil Procedure.

**18.30 Progress Payments And Retentions On Architect, Engineer, And Land Surveyor Contracts**

Pursuant to California Civil Code § 3320, for any contract for public works or improvement, the MTA shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment within 45 days of receipt of a written demand for payment in accordance with the contract. If any amount is wrongfully withheld or is not timely paid, the prime design professional shall be entitled to a penalty of 1½ percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made.

**18.31 Request For Payment Certification**

All contracts above the small purchase threshold for services and construction purchases shall contain a clause, which requires the contractor to submit with each request for payment the following certification:

**REQUEST FOR PAYMENT CERTIFICATION**

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to the MTA in accordance with the contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to the MTA a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts.

I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which the MTA may have either under contract or law.

For materials and equipment purchases above the small purchase threshold, the buyer may require the contractor to submit the required certification for requests for payment.

The contract administrator/buyer will disapprove and Accounts Payable will return unpaid any request for payment which does not contain the certification when required.



## **19.0 Purpose And Scope**

This Chapter prescribes policies and procedures to ensure MTA contracts conform to their quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements.

### **19.1 MTA Responsibilities**

- A. The Contracting Officer is responsible for ensuring that the contractor complies with the quality and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.
- B. The Contracting Officer may delegate contract quality assurance and warranty responsibility to an MTA technical representative in accordance with this activity.
- C. The Contracting Officer shall ensure that matters of insurance and insurability, which may arise prior to and after contract award, are properly coordinated with the MTA's Risk Management Manager.
- D. The Contracting Officer or his designated representative shall be responsible for the following:
  - 1. Ensuring that each contract includes inspection and other quality requirements, including warranty clauses when appropriate, which are necessary to protect the MTA's interests;
  - 2. Ensuring that contract quality assurance is conducted by the MTA before acceptance;
  - 3. Ensuring that no contract precludes the MTA from performing inspection;
  - 4. Ensuring that nonconformance is rejected, unless otherwise provided for in the contract;
  - 5. Ensuring that the quality assurance and acceptance services of the user department are implemented when it will be effective, economical, or in the best interest of the MTA;
  - 6. Obtaining any specifications for inspection, testing, and other contract quality requirements;
  - 7. Including in solicitations and contracts the necessary requirements for the contractor's control of quality; and
  - 8. Ensuring that contracts clearly indicate the level of quality review required by referring to established standards, procedures, tests, and equipment, or by providing acceptance criteria and tolerances.

### **19.2 Contractor Responsibilities**

- A. The Contractor shall be responsible for carrying out its obligations under the contract by doing the following:
  - 1. Controlling the quality of supplies, services, or construction;
  - 2. Ensuring that vendors or suppliers of raw materials, parts, components, and subassemblies have an acceptable quality control program as specified in their contracts;





3. Tendering to the MTA for acceptance only those items that conform to the contract requirements;
  4. Maintaining and substantiating evidence, when required by the contract, that contract quality requirements, have been met;
  5. Ensuring the quality of all subcontractor services.
- B. The Contracting Officer may require a Contractor to provide and maintain an inspection system or program for the control of quality that is acceptable to the MTA, as specified in the contract.
- C. The control of quality by the contractor may relate to, but is not limited to, the following:
1. Manufacturing processes, to ensure the product produced meets the contract's technical requirements;
  2. Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;
  3. Testing and examination, to ensure that practices and equipment provide the optimum means of evaluating the characteristics of the product subject to inspection;
  4. Reliability and maintainability assessment, including life cycle, endurance and continued readiness;
  5. Fabrication and delivery of products, to ensure that only conforming products are tendered to the MTA;
  6. Providing technical documentation including drawings, specifications, handbooks, manuals, other technical publications, computer software and training required by the contract;
  7. Procedures and processes for ensuring that contract performance requirements are continually met.
- D. The contractor shall be responsible for performing all quality control required by the contract except that specifically reserved for performance by the MTA.

**19.3 Contract Quality Requirements**

- A. The Contracting Officer based upon the advice of the appropriate MTA program office, shall include appropriate quality requirements in each solicitation and contract. The type and extent of contract quality requirements needed in each solicitation or contract shall depend on the particular procurement and may range from inspection at time of acceptance to a requirement for the contractor's implementation of a comprehensive quality control program.
- B. A solicitation or contract may provide for alternative, quality control methods to obtain broader competition and reduce costs.
- C. The Contracting Officer or his designated technical representative may authorize alternative quality control or inspection methods (recommended by the contractor) when in the best interests of the MTA.



- D. Unless otherwise specified by the contract, required contractor testing may be performed in the contractor's or a subcontractor's testing facility or in another testing facility acceptable to the Contracting Officer in the presence of an MTA representative.
- E. Except as provided in the section below, when supplies, services, or construction are procured by small purchase procedures pursuant to the Small Purchase Procedures, the MTA shall rely on the contractor to accomplish all quality control needed to ensure compliance with contract quality requirements before the supplies, services or construction are tendered to the MTA.
- F. The MTA shall not rely on quality control by the contractor if the Contracting Officer or his designated representative determines a need for testing of the supplies, services, or construction by the MTA in advance of their tender for acceptance, or determines that there is a need to review the adequacy of the contractor's internal work processes. In making the determination, the Contracting Officer or his designated representative shall consider the following:
  - 1. The nature of the supplies, services, or construction being procured and their intended use;
  - 2. The potential losses in the event of defects;
  - 3. The likelihood of uncontested replacements or correction of defective work;
  - 4. The cost of a detailed inspection by the MTA.
  - 5. Warranties
- G. With respect to contracts other than small purchase procurements, the Contracting Officer shall include in each solicitation and contract a standard clause setting forth quality control guidelines that requires the contractor to do the following:
  - 1. Provide and maintain a quality control and inspection system that is acceptable to the MTA prior to award of contract;
  - 2. Give the MTA the right to conduct inspections and tests while work is in progress;
  - 3. Keep complete records of its quality control work, which are to be made available to the MTA upon request.
  - 4. Warranties
- H. The Contracting Officer, based upon advice of the appropriate MTA program office, shall determine the extent of contract quality requirements, including contractor inspection required under each contract.

#### **19.4 MTA Quality Assurance**

- A. Contract quality assurance shall be performed whenever it is deemed necessary to determine contractor conformance to contract requirements.
- B. Each contract shall designate the location(s) where the MTA reserves the right to perform quality assurance.



- C. If the contract provides for performance of MTA quality assurance at the source, the place or places of performance shall not be changed without the authorization of the Contracting Officer.
- D. If a contract provides for delivery and acceptance at destination and the MTA inspects the supplies at a place other than the destination, the supplies shall not be re-inspected at the destination but shall be examined for quantity, damage in transit, and possible substitution or fraud.
- E. Inspection shall be performed by MTA personnel or their designee or under the direction or supervision of MTA personnel.
- F. The individual delegated responsibility for the MTA inspection shall document the inspection in a report, on a commercial shipping document or a packing list.

#### **19.4.1 Contract Quality Assurance At Source**

- A. The MTA shall perform contract quality assurance, including inspection, at the source, in the following circumstances:
  - 1. Performance at any other place would require uneconomical disassembly or destructive testing;
  - 2. Considerable loss would result from the manufacture and shipment of unacceptable supplies, or from the delay in making necessary corrections;
  - 3. Specially required instructions; test equipment, software, gauges, or facilities are available only at the source;
  - 4. Performance at any other place would destroy or require the replacement of costly special packing and packaging;
  - 5. Inspection by the MTA during contract performance is essential;
  - 6. The Contracting Officer determines that source inspection is in the best interest of the MTA.

#### **19.4.2 Contract Quality Assurance At Destination**

- A. Contract quality assurance that can be performed at destination shall be limited to inspection of the supplies or services.
- B. Inspection shall be performed at destination under the following circumstances:
  - 1. Supplies are purchased off-the-shelf and require no technical inspection;
  - 2. Necessary testing equipment is located only at destination;
  - 3. The supplies are perishable;
  - 4. The contract is for services performed at the destination;
  - 5. The Contracting Officer determines that inspection at destination is in the best interests of the MTA;
  - 6. The components are assembled on site and operation of components together is critical.



7. Components are backed by a warranty.

### **19.5 Contract Quality Assurance For Small Purchases**

- A. In determining the type and extent of MTA contract quality assurance to be required for small purchases, the Contracting Officer shall consider the application of the supplies or services, the amount of potential losses, and the likelihood of uncontested replacement of defective work.
- B. Except as provided in this Chapter, when the circumstances set forth in the Contract Quality Requirements (Section 19.3) exist, the MTA shall inspect small purchases at destination only for type and kind, quantity, damage, operability, and may inspect for preservation, packaging, packing, and marking, if applicable.
- C. Except as provided for in the Requirements section, detailed MTA inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property.
- D. Except as provided for in the Requirements section, when repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, MTA inspection may be reduced to a periodic check of purchases.
- E. In special situations such as those specified in (19.4.1) Quality Assurance at Source, the Contracting Officer may require a more detailed quality assurance assessment.

### **19.6 Contract Quality Assurance Of Subcontracts**

- A. MTA contract quality assurance on subcontracted supplies or services shall be performed only when required or when in the best interest of the MTA.
- B. MTA contract quality assurance on subcontracted supplies or services shall not relieve the prime contractor of any responsibilities under the contract.
- C. The Contracting Officer or delegated MTA representative shall perform quality assurance at the subcontract level in the following circumstances:
  1. The item is to be shipped from a subcontractor's plant directly to the MTA and inspection at source is required;
  2. The conditions for quality assurance at the source under the section entitled Quality Assurance at Source (19.4.1) are applicable;
  3. The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's plant, be performed by the MTA;
  4. It is otherwise required by the contract or determined by the Contracting Officer to be in the best interests of the MTA.
- D. All oral and written statements and contract terms and conditions relating to MTA quality assurance actions at the subcontract level shall be worded so as not to do any of the following:
  1. Affect the contractual relationship between the prime contractor and the MTA, or between the prime contractor and the subcontractor;



2. Establish a contractual relationship between the MTA and the subcontractor;
3. Constitute a waiver of the MTA's right to accept or reject the supplies or services.
4. Void any warranties.

### **19.7 Nonconforming Supplies, Services, Or Construction**

- A. Except as provided in the sections below, the Contracting Officer shall reject contract nonconformance.
- B. The contractor shall be given an opportunity to correct or replace nonconformance when the correction or replacement can be accomplished within the required delivery or performance schedule.
- C. Unless the contract specifies otherwise, any necessary correction or replacement shall be done without additional cost to the MTA.
- D. In situations not covered by the section above, the Contracting Officer shall reject the supplies or services when the nonconformance adversely affects safety, health, reliability, durability, performance, or any other basic objectives of the specification.
- E. In situations not covered by the section above, the Contracting Officer may accept supplies or services if it is the Contracting Officer determined that acceptance is in the best interest of the MTA.
- F. In situations not covered by the section above, the Contracting Officer shall consider the following when making a determination whether nonconforming items will be accepted:
  1. Advice of the delegated technical representative that the material is safe to use and will perform its intended purpose;
  2. Information regarding the nature and extent of the nonconformance;
  3. A request from the contractor for acceptance of the nonconforming supplies or services, if feasible;
  4. A recommendation by the technical representative for acceptance or rejection, with supporting rationale;
  5. The contract adjustment considered appropriate, including any adjustment offered by the contractor.
  6. Warranties and ease of replacement.
- G. The delegated technical representative shall furnish the data required in the above section to the Contracting Officer in writing. When it is in the best interest of the MTA, the data may be furnished verbally and later confirmed, in writing within a reasonable time.
- H. Before making a decision to accept nonconforming items, the Contracting Officer shall obtain written concurrence of the appropriate Executive Officer or Department Director.



- I. The Contracting Officer shall reject the repeated tender of nonconforming items by appropriate action, including rejection of nonconforming items, when appropriate, and documentation of the contractor's performance.
- J. Except when the nonconformance is minor, each contract under which nonconforming items are accepted shall be modified by the Contracting Officer to provide for an equitable price reduction or other consideration.
- K. When the Contracting Officer rejects nonconforming supplies or services the Contracting Officer shall issue a notice of rejection in writing and include the reasons for rejection. The notice of rejection is to be coordinated with the delegated technical representative and shall be issued to the contractor within five (5) working days of the rejection.

### **19.8 Acceptance**

- A. Acceptance shall constitute acknowledgment the supplies, services, or construction conform to the applicable contract quality and quantity requirements, except as provided in this section and subject to other terms and conditions of the contract.
- B. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the terms and conditions of the contract.
- C. Supplies, services, or construction shall not be accepted before completion of MTA contract quality assurance actions.
- D. Acceptance shall be evidenced by execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document or packing list.

#### **19.8.1 Responsibility For Acceptance**

- A. Acceptance of supplies or services shall be the responsibility of the Contracting Officer.
- B. When the Contracting Officer assigns the responsibility for acceptance to another employee, acceptance by that employee shall be binding on the MTA.

#### **19.8.2 Place Of Acceptance**

- A. Each contract shall specify the place of acceptance.
- B. If applicable, contracts that provide for MTA contract quality assurance at the source shall provide for acceptance at the source.
- C. If applicable, contracts that provide for MTA contract quality assurance at destination shall provide for acceptance at destination.
- D. Supplies accepted at a place other than destination shall not be re-inspected at destination for acceptance purposes, but shall be examined at destination for quantity, damage in transit, and possible substitution or fraud.

### **19.9 Certification Of Conformance**

- A. A certificate of conformance may be used instead of source inspection, whether the contract calls for acceptance at the source or at destination, at the discretion of the Contracting Officer, if the following conditions apply:



1. Acceptance on the basis of a contractor's certificate of conformance is in the best interests of the MTA; and
  2. Based on the contractor's reputation or past performance, it is assured that supplies or services furnished will be acceptable and any defective work shall be replaced, corrected, or repaid without contest.
  3. Warranties are not void.
- B. Even when a certificate of conformance is used pursuant to the above Section, the MTA's right to inspect supplies, services, and construction under the inspection provisions of the contract shall not be prejudiced.

#### **19.10 Transfer Of Title And Risk Of Loss**

- A. Title to supplies, equipment and construction shall pass to the MTA upon formal acceptance, regardless of when or where the MTA takes physical possession, unless the contract specifically provides otherwise. Title to stock items shall pass to the MTA upon receipt at destination and initial inspection for completeness and absence of damages.
- B. Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the contractor until, and shall pass to the MTA upon either of the following:
1. Delivery of the supplies to a carrier if transportation is f.o.b. origin;
  2. Acceptance by the MTA or delivery of the supplies to the MTA at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- C. The provisions of the above section shall not apply if the contractor fails to conform to contract requirements.
- D. The risk of loss of or damage to nonconforming items shall remain with the contractor until cure or acceptance. After cure or acceptance, the provisions of the section above shall apply.
- E. The contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the MTA acting within the scope of their employment.
- F. The risk of loss or damage to supplies shall remain with the contractor until formal acceptance by the MTA.
- G. If any of the items are excepted from formal acceptance by the MTA due to defects or failure to conform to the requirements and specifications of the contract, or are subject to contingent acceptance pending cure of defects, the risk of loss or damage shall remain with the contractor until the defects are cured and the contingency is removed or the construction is formally accepted by the MTA.

#### **19.11 Warranties**

- A. The Contracting Officer shall ensure that the warranty provisions in MTA contracts clearly delineate the rights and obligations of the contractor and the MTA for defective items and services and fosters quality performance.



- B. Unless additional warranty provisions are specifically justified by the cognizant user or program office, Contracting Officers shall include the "Warranty" and "Correction of Deficiencies" provisions in all supply and service contracts. Deviations to the standard warranty provisions must be coordinated with the Office of County Counsel.





**20.0 Purpose And Scope**

- A. The MTA as a recipient of federal funds must comply with requirements of Federal law and regulations in acquiring or using rights in patents, copyrights, and proprietary information.
- B. The contracting office is responsible for assuring that requirements of Federal law and regulations are included in contracts.

**20.1 General Provisions**

- A. A contractor shall obtain permission from the lawful owner(s) of copyrighted materials before including all or part of any copyrighted work in any item to be delivered under a contract, unless permission is not required under the fair use or other applicable provisions of Federal copyright statutes or regulation.
- B. The MTA shall not unreasonably restrict the commercial use, outside of the performance of the contract with the MTA, of inventions made while performing MTA contracts.
- C. The Contracting Officer shall not refuse to award a contract solely on the basis of a suspicion that the contractor may infringe a patent, unless the Contracting Officer determines that refusal is in the best interests of the MTA.
- D. Except as provided in this Section, the Contracting Officer shall include in all solicitations and contracts, a clause, approved by the Executive Officer, which requires the contractor to indemnify the MTA against infringement of rights in patents, copyrights, or proprietary information.
- E. The MTA shall limit its rights in proprietary information resulting from private development to those reasonable for present and future use by the MTA, and to those required by FTA pursuant to the terms and conditions of a Federal grant.

**20.2 Notice And Assistance`**

- A. The contractor shall notify the Contracting Officer of all claims of patent or copyright infringement or misappropriation of proprietary information that come to the contractor's attention in connection with performing an MTA contract.
- B. A contractor shall, upon request, assist the MTA with any evidence and information in its possession in connection with any claim or lawsuit against the MTA due to any alleged patent or copyright infringement or misappropriation of proprietary information arising out of or resulting from the performance of a contract.
- C. The Contracting Officer shall include a clause, approved by the Executive Officer, in each solicitation and contract requiring the contractor to report to the Contracting Officer each suit or claim of patent or copyright infringement or misappropriation of proprietary information. The clause shall also require the contractor, upon request, to furnish to the MTA all evidence and information in possession of the contractor pertaining to such suits or claim and that the contractor shall furnish evidence and information at its own expense.

**20.3 Indemnification**

- A. The Contracting Officer shall not include in any solicitation or contract any provision by which the MTA expressly agrees to indemnify the contractor against liability for patent or copyright infringement or misappropriation of proprietary information.
- B. The Contracting Officer shall ensure that each contract requiring indemnification includes an indemnity clause, approved by the Executive Officer, that provides for reimbursement of the MTA for any liability incurred as the result of an infringement of rights in patents, copyrights, or proprietary information.
- C. The Contracting Officer shall not require the inclusion of an indemnity clause in the following situations:
  - 1. When the contract is awarded using the small purchase procedures contained in this Manual; or
  - 2. When the contract is solely for architect-engineer services.
- D. All contracts shall include a provision requiring the contractor to indemnify the MTA for patent or copyright infringement unless it is in the best interests of the MTA to exempt one or more specific United States patents from a patent indemnity clause, the Contracting Officer may grant the exemption upon written approval of the Executive Officer. The Contracting Officer shall include the Executive Officer's approval in the contract file, and shall include a clause in the contract that allows for waiver of indemnity of one (1) or more specific patents.

**20.4 Licensing And Royalty Information**

- A. Except as provided in the Section below, upon the request of the Contracting Officer, a contractor or a prospective contractor shall furnish to the Contracting Officer licensing and royalty information and reports sufficient to determine whether royalties anticipated or actually paid under MTA contracts are excessive, improper, or inconsistent with any MTA rights in particular inventions, patents, patent applications, copyrights, or proprietary information. The Contracting Officer shall take appropriate action to reduce or eliminate excessive or improper royalties.
- B. The contracting office shall not require bidders to provide royalty and licensing information in sealed bids unless the Contracting Officer determines that the information is necessary for the proper protection of the MTA's interests.
- C. The Contracting Officer shall include a clause, approved by the Executive Officer, in each request for proposals requesting information relating to any proposed charge for royalties or need to obtain a license for use of any rights in patents, copyrights, or proprietary information.
- D. The Contracting Officer, when considering the approval of a subcontract in accordance with the provisions of this Manual, shall require and obtain the same royalty and licensing information and reports, and take the same action with respect to subcontracts in relation to royalties and licenses, as required by the Section above for prime contracts. Consent to



subcontract does not have to be withheld pending receipt of the required information and reports.

- E. When the MTA is obligated to pay a royalty on a patent, copyright, or proprietary information because of a license agreement between the MTA and the licensor, and the Contracting Officer knows or has reason to believe that the licensed patent will be applicable to a prospective contract, the Contracting Officer shall furnish information relating to the royalty to prospective offerors. The Contracting Officer shall include in the solicitation a notice of the license, the number or description of the patent, copyright, or proprietary information, the royalty rate stated in the license, and any other pertinent information.
- F. When the MTA is obligated to pay a royalty because of a license agreement between the MTA and a licensor, the solicitation shall require each offeror to furnish information indicating whether it is a licensee. The solicitation clause shall be approved by the Executive Officer. Based on this information the Contracting Officer may do either of the following:
  - 1. Evaluate an offeror's price by adding an amount equal to the royalty; or
  - 2. Negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.
- G. If, at any time, the Contracting Officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with the MTA's rights, or are excessive or otherwise improper, The Contracting Officer shall promptly report these matters to the Office of County Counsel.
- H. After consultation with the Office of County Counsel, the Contracting Officer shall act to protect the MTA against payment of royalties on supplies or services in the following instances:
  - 1. When the MTA has a royalty free license with respect to the supplies or services;
  - 2. When the rate is in excess of the rate at which the MTA is licensed; or
  - 3. When the royalties, in whole or in part, otherwise constitute an improper charge.
- I. If the Contracting Officer, after consultation with the Office of County Counsel, determines that the MTA has paid or will pay royalties under an existing or prospective contract that are inconsistent with the MTA's rights or are excessive or otherwise improper, and if it is in the best interests of the MTA, the contracting office shall obtain a refund (pursuant to a clause, approved by the Executive Officer, providing for a refund) or shall negotiate for a reduction of royalties.

### **20.5 Patent Rights Under Contracts**

- A. The Executive Officer shall prescribe standard contract provisions governing patent rights under MTA contracts for inclusion in solicitations and contracts, in accordance with the provisions of this Section.
- B. If the contract permits the contractor to retain title, and the contractor elects to retain title to an invention, the MTA shall have at least a nonexclusive, non-transferable, irrevocable, paid-up license to use or have used, for or on behalf of the MTA, any invention made in the



performance of work under a contract. The MTA may have additional rights to sublicense the invention if provided in the contract.

- C. The MTA shall have the right to receive title to any invention made in the performance of a contract unless the contract provides otherwise. If the contract extends a limited right to the contractor to acquire patent rights, the MTA shall have the right nevertheless to receive title to an invention in the following circumstances:
1. If the contractor does not disclose the invention within the time specified in the contract;
  2. In any instance where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the contract;
  3. In any instance where the contractor has not filed a patent application within the time specified in the contract;
  4. In any instance where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceeding on the patent; and
  5. In any instance where the contractor no longer desires to retain title.
- D. If the contract gives a limited right to the contractor to acquire patent rights, the contractor may request greater rights to an invention within the period specified in the contract. The Contracting Officer may grant a request for greater rights if he/she determines that the grant of greater rights is in the best interests of the MTA and in compliance with FTA grant requirements. In making the determination, the Contracting Officer shall consider the following objectives:
1. Ensuring that inventions are used in a manner that will promote full and open competition and free enterprise; and
  2. Ensuring that the MTA obtains sufficient rights in MTA supported inventions to meet the needs of the MTA and protect the public against nonuse or unreasonable use of invention.
  3. If the contract permits the contractor to retain title to an invention and the contractor elects not to retain title, the MTA may, after consultation with the contractor, grant a request for retention of rights by the inventor.
- E. If an MTA employee is a co-inventor of an invention made under a contract and the MTA acquires all or part of the rights to the invention, the Executive Officer may take any of the following actions that is consistent with the best interests of the MTA:
1. Assign all or part of the MTA's rights to its employee while retaining for the MTA any rights set forth in this Manual;
  2. Assign all or part of the MTA's rights to the contractor for reasonable consideration, after negotiation by the Contracting Officer of a reasonable consideration;
  3. If the contractor is a nonprofit organization or is a certified minority business, assign all or part of the MTA's rights without consideration; or
  4. Retain the MTA's rights.



- F. For purposes of this section, an invention is made in the performance of work under an MTA contract if it is conceived or first actually reduced to practice in the performance of work under an MTA contract.

## **20.6 Patent Rights Procedures**

- A. The Contracting Officer may include clauses, approved by the Executive Officer, in a contract which require the contractor to do any or all of the following:
1. For Federally funded contracts, immediately notify the Contracting Officer and FTA if any invention, improvement or discovery is conceived or first actually reduced to practice in the course of or under the contract and is patentable under the laws of the United States of America, or any foreign country. The notice shall include a detailed report;
  2. Provide periodic reports (but not more frequently than annually) listing all inventions required to be disclosed during the period covered by each report;
  3. Provide a report prior to the closeout of the contract listing all inventions or stating that there were none;
  4. Provide, upon request, the patent application filing date, serial number and title, a copy of the patent application, and patent number and issues date for any subject invention in any country in which the contractor has applied for patents; and
  5. Furnish the MTA an irrevocable power to inspect and make copies of the patent application file.
- B. The contractor shall submit to the Contracting Officer a document confirming all rights to which the MTA is entitled, and shall furnish to the Contracting Officer an irrevocable power to inspect and make copies of the patent application file six (6) months after submitting the invention disclosure if the application has been previously filed.
- C. If the Contracting Officer determines, in writing, that it is in the best interests of the MTA, the Contracting Officer may modify, waive, or omit any of the rights set forth in the previous section. The modification, waiver, or omission shall be in writing and shall be accompanied by a written statement of facts justifying the determination. The statement of facts shall include the following:
1. A description of the extent to which the MTA's rights are to be modified, waived, or omitted;
  2. The facts and justification for the modification, waiver, or omission; and
  3. A statement explaining how the interests of the MTA will be better served by the modification, waiver, or omission.
- D. The contractor shall establish and maintain effective procedures to ensure that its patent rights obligations are met, that subject inventions are timely identified and disclosed, and that patent applications are filed when required.
- E. Contractors shall submit all reports required by the Contracting Officer in accordance with the contract.



- F. The Contracting Officer shall establish follow-up procedures to protect the MTA's interests and to ensure that subject inventions are identified and disclosed; that, when required, patent applications are filed; and that the MTA's rights are established and protected.

### **20.7 Rights To Copyrighted Material And Proprietary Information**

- A. The Executive Officer shall prescribe standard contract provisions governing rights to copyrighted material and proprietary information under MTA contracts for inclusion in solicitations and contracts, in accordance with the provisions of this section.
- B. A Contracting Officer may acquire title to, or obtain or limited access to, copyrighted materials, materials subject to copyright protection, and proprietary information developed under or used in the performance of contracts.
- C. Contracts which obligate Federal funds shall include a provision which provides the Department of Transportation, Federal Transit Administration a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal Government purposes:
  - 1. The copyright in any work developed under an MTA contract; and
  - 2. Any rights of copyright to which a contractor purchases ownership with grant support.
- D. When necessary for the evaluation of bids or proposals, a Contracting Officer may include a request for proprietary information and data in a solicitation, in accordance with the provisions of the Section.
- E. In order to protect the property rights and economic interests of contractors and prospective contractors, the Executive Officer shall develop written procedures for safeguarding and limiting access to all types of proprietary information.
- F. The procedures issued by the Executive Officer shall provide limited access to proprietary information developed or used under a contract. Unless otherwise provided by the Executive Officer, access shall be limited to MTA employees who are directly involved with the performance of the contract or who otherwise need access in order to properly perform their duties in connection with the contract or the items or services provided under the contract.

### **20.8 Proprietary Or Confidential Information In Bids And Proposals**

- A. A bidder or offeror shall designate information contained in a response to the invitation for bids or request for proposals as proprietary or confidential by specifically identifying that information in writing in the bid or proposal.
- B. A bidder or offeror including proprietary or confidential information in its bid or offer shall conspicuously display the following information on the first page of the bid or offer if the bidder or offeror does not want the proprietary or confidential information disclosed to the public for any purpose or used by the MTA except for evaluation purposes:
  - 1. That the bid or offer includes proprietary or confidential information that shall not be disclosed outside the MTA and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate the bid or proposal;



2. That if a contract is awarded to the bidder or offeror, the MTA shall have the right to duplicate, use, or disclose the proprietary or confidential information to the extent provided in the contract; and/or as appropriate under law including the California Public Records Act
  3. That this restriction does not limit the MTA's rights to use the proprietary or confidential information if it is obtained from another source without restriction; and
  4. That the bidder or offeror has specifically identified, by page number or otherwise, the proprietary or confidential information subject to the restriction.
- C. In addition to the requirements of the previous section, the bidder or offeror shall conspicuously mark each separate sheet containing proprietary or confidential information with a notation to the effect that use or disclosure of proprietary or confidential information contained on the sheet is subject to the restriction set forth on the first page of the bid or offer.
- D. The bidder or offeror shall not designate as confidential or proprietary the name of the bidder or offeror, the bid or proposal price, or any information that is not actually proprietary or confidential.
- E. If, after inspection of a bid or proposal, the Contracting Officer or other MTA official determines that all or any part of the information designated as confidential or proprietary may be disclosed, the contracting office shall notify the bidder or offeror of that determination and allow the contractor ten (10) days to respond.
- F. If the Contracting Officer does not agree that evidence presented by the bidder or offeror supports the confidential or proprietary designation of the information identified by the Contracting Officer, the Contracting Officer shall do one (1) of the following:
1. Declare the bid non-responsive or the proposal unacceptable and eliminate the bid or proposal from consideration; or
  2. If the Contracting Officer determines that it would be in the best interests of the MTA to consider the bid or proposal, the Contracting Officer may, with the concurrence of the Office of County Counsel, remove the confidential or proprietary designation and consider the bid or proposal.
- G. The bidder or offeror shall be notified in writing of the Contracting Officer's decision under the above section. If the bid or proposal will be considered, the notice to the contractor shall include a warning that the bidder's or offeror's designation has been removed, and the information may be disclosed.
- H. If the bid or proposal is eliminated under the above section, the designated information shall not be disclosed, and returned to the contractor, or, if required by law, disclosed as appropriate. If the bid is modified by the Contracting Officer to remove any designation of information as confidential or proprietary, the bidder or offeror may appeal the Contracting Officers determination to the Office of County Counsel after award. The Office of County Counsel shall consider the evidence submitted by the bidder or offeror and the findings and



determinations of the Contracting Officer, and shall render a decision upholding or overruling the Contracting Officer's determination, in whole or in part.

- I. Each solicitation shall contain a provision which indicates the right of the contractor to designate confidential or proprietary information in response to the solicitation, as well as the right of the Contracting Officer to challenge the designation and either eliminate the bid or proposal or remove the designation.
- J. In the event the contractor disputes the determination to remove the designation, the contractor must bring an action to prevent the removal within 10 days of notification of the removal, or will be deemed to waive his/her right to dispute such removal.

### **20.9 Solicitation And Contract Provisions**

- A. In accordance with the requirements of the previous sections, the Contracting Officer shall include the provision entitled "Notice and Assistance Regarding Patent and Copyright Infringement" in solicitations and contracts (except small purchases) for supplies, services and construction.
- B. Whenever a provision is required for indemnification, the Contracting Officer shall include the provision entitled "Patent Indemnity" in solicitations and contracts for supplies, services and construction.
- C. In accordance with the requirements of this Chapter, the Contracting Officer shall include the provision entitled "Royalty Information" in solicitations and contracts (except small purchases) for supplies and services.
- D. In solicitations and contracts for experimental, developmental or research work, the Contracting Officer shall include the provision entitled "Patent Rights - Retention by the Contractor".
- E. Contracts for architect-engineer or related services shall include the clause entitled "Designs and Data - MTA Rights".
- F. Supply and service contracts (except small purchases) shall include a provision in solicitations and contracts entitled "Rights in Technical Data".



**21.0 Purpose And Scope**

- A. It is the policy of the MTA to promptly review and evaluate all contractor claims.
- B. This Chapter discusses the MTA policy for handling contractor claims and disputes resolution proceedings and identifies those MTA officials and representatives responsible for administering such actions and for implementing decisions rendered by appropriate officials.
- C. The Contracting Officer is responsible for the review, evaluation and determining the merit of contractor claims. In making merit determinations, the Contracting Officer shall avail himself/herself of all MTA resources including specialists in the fields of contracting, finance, law, contract audit, engineering and construction, and others. Determinations of merit shall be reviewed by the MTA's General Counsel, the Office of County Counsel for legal sufficiency on all claims.

**21.1 Merit Determination**

Merit determination is an evaluation of the contractor's claim and facts sufficient to establish that the contractor may, or may not be entitled under the terms of the contract to additional compensation and/or a time extension. The amount of compensation or time is subject to a quantum determination. The Merit determination must be reviewed and formally approved (or disapproved) by the MTA Contracting Officer or his/her designee with advice from MTA's General Counsel, the County Counsel and appropriate technical personnel before processing and negotiating the claim with the Contractor.

**21.2 FTA And MTA Requirements**

The Federal Transit Administration (FTA) has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contract. The MTA must comply with the project management guidelines of FTA Circular 5010.1C in processing contractor claims against federally funded contracts.

**21.3 Contract Claims/Disputes**

- A. A "claim" is a demand or assertion by one of the parties made in writing and seeking as a right, the payment of money, adjustment or interpretation of Contract, Terms, or other appropriate relief. The claims process begins with the Notice of Intent to Claims (NOIC), submitted to the MTA by the Contractor. The NOIC should be recorded in the project Claims Log immediately upon receipt. The Contracting Officer or designee should review the NOIC and make a summary preliminary merit determination to insure that the MTA is not continuing conduct that may result in additional damages.
- B. The Contracting Officer may resolve Contractor claims or may delegate appropriate authority to others to settle claims. In addition, the CEO may establish a Claims Resolution Committee comprised of senior executive officials to include Executive Officer of Procurement, the affected department head and such others as designated by the CEO. The Contracting Officer or the Claims Resolution Committee, if formed, is responsible for overall management, control, review and technical approval of claims under the affected department.



- C. Meritorious claims that can be completely settled as to time and money issues should be processed by the MTA as contract modifications. Resolvable claims for construction contracts should be processed in accordance with change order procedures.
- D. If, the Contracting Officer determines that a claim has no merit or that equitable adjustment cannot be negotiated for a claim with merit, a final determination should be prepared and coordinated with the appropriate Executive Officer or Department Director and the Office of County Counsel.
- E. The final decision shall include the following elements: (1) Description of claim or dispute, (2) reference to the pertinent contract terms, and (3) statement of factual areas of agreement and disagreement, statements of Contracting Officer's decision, with supporting rationale. The Contracting Officer's Final Decision shall be transmitted by certified or registered mail, return receipt requested, to the contractor's address shown in the contract unless the contractor has previously requested, in writing, that another address be used. The return receipt must indicate the date of receipt of the Final Decision by the contractor.

#### **21.4 Appeals**

The Executive Officer, Procurement shall establish and implement procedures for resolution of appeals from decisions of the Contracting Officer that are equitable and protects the interests of the MTA and the public. Such procedures shall make use of Alternative Disputes Resolution processes including but not limited to meditation, arbitration or disputes review boards.

#### **21.5 MTA Claims Against The Contractor**

The MTA may have reason and contractual authority to initiate claims against the contractor such as back-charges, either during the contract performance or warranty period, or A/E contractor liabilities for MTA costs resulting from deficiencies in services. The Contracting Officer may give the contractor written notice of the complaint and an opportunity to take corrective action, if appropriate. If, after a reasonable time, the contractor has not taken satisfactory corrective step, the Contracting Officer will take action to make the required corrections and to assess back-charges to the contractor. In back-charges on active contracts, a unilateral modification should be issued if agreement cannot be reached with the contractor. The Contracting Officer in coordination with the project office shall attempt to settle all claims against the contractor. If unsuccessful, other remedies, including, other disputes resolution proceedings, should be pursued to resolve the claim.

#### **21.6 Litigation Actions**

The Office of County Counsel shall be responsible for handling all court actions involving suits brought against the MTA by contractors and those against contractors by the MTA. The Contracting Officer will assist counsel in coordinating litigation settlements with all affected MTA offices including obtaining the required management approvals as applicable. All affected MTA offices are responsible for providing the support requested by County Counsel. The Office of County Counsel supported by the Office of Procurement shall provide periodic status reports of all pending contract court actions to the Chief Executive Officer and the Board of Directors as required.



**21.7 Cost Or Price Analysis**

- A. The MTA's position on all claims shall be properly supported by cost or price analysis performed in accordance with the procedures prescribed in Chapter 15 Cost And Price Analysis.
- B. As required by Chapter 1 and Chapter 15, the Contracting Officer shall obtain pre-negotiation contract audits from Management Audit Services Department (MASD) or its designee prior to the negotiation of any claim in excess of one hundred thousand dollars (\$100,000). This requirement shall apply to all pending claims covered by this Chapter. MASD audit reports shall be included as part of the quantum determination and addressed in the pre-negotiation position.

**22.0 Purpose And Scope**

This Chapter describes the policy to be followed for lease vs. purchases alternatives and factors to be considered in making these decisions. In addition, Federal Accounting Standards Board (FASB) 13 provides calculation for "operating" use "capital" lease where each require different cost accounting treatments.

It is usually less economically advantageous for the MTA to lease equipment than to purchase it. There are, in some instances, exceptions to this rule. For example, short-term leases of equipment required for a unique task may be reasonable and economically sound. In some cases, it is easier to have equipment maintained if it is leased. However, long term leases and leases for items that should be capitalized but cannot because of budget rigidities are often not prudent from an economic perspective.

**22.1 MTA Policy**

If a determination is made to lease equipment, analysis addressing the economics of lease vs. purchase must be made and forwarded to the Procurement. The analysis should be appropriate to the size and complexity of the procurement.

**22.2 Determining Factors For Leasing**

A. In determining whether the lease of equipment is feasible, the following factors must be considered:

1. Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
2. Financial and operating advantages of alternative types and makes of equipment;
3. Total rental cost for the estimated period of use;
4. Net purchase price, if acquired by purchase;
5. Transportation and installation costs;
6. Maintenance and other service costs;
7. Potential use of the equipment by other agencies after it's use by the MTA is completed;
8. Trade-in or salvage value;
9. Imputed interest costs; and
10. Availability of a servicing capability especially for highly complex equipment, e.g., can the equipment be serviced by the MTA if it is purchased; and
11. FASB 13 accounting calculations.

**22.3 FTA Requirements**

A. All leasing arrangements made with Federal funding must comply with the requirements as outlined in FTA Circular 5010.1C, Grant Management Guidelines.



- B. If a leasing agreement is entered into the following requirements apply and must be contained in the lease agreement:
  - 1. Project equipment shall be operated by the lessee to serve the best interest and welfare of the MTA and the public;
  - 2. Lessee shall maintain project equipment at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the MTA. The MTA and the FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the equipment.

**22.4 Equipment Management**

- A. Equipment management procedures shall include the following minimum requirements:
  - 1. Property records must be maintained by the MTA. Records must include a description, identification number, procurement source, acquisition date, cost, percentage of Federal participation in the cost, the grant project under which the equipment was procured, location, use and condition, and any disposition data, including the date of disposal. The records should also state holds title to the equipment.

**23.0 Purpose And Scope**

- A. The purpose of this Chapter is to establish policy and procedures for administrative resolution by Contracting Officers of protests arising in the acquisition process and to implement applicable Federal Transit Administration (FTA) requirements and California statutes.
- B. The protest policy and procedures herein do not include the actions to be taken by MTA officials in reacting to legal actions initiated by dissatisfied contractors in the U.S. Courts pertaining to MTA contract award decisions.
- C. All MTA procurements shall be conducted in a manner, which assures that all prospective contractors are provided fair and equal consideration in the selection of the successful contractor and award of MTA contracts in order to preserve and protect the integrity of the procurement system. To that end, any interested party shall have the right to have its complaint considered and resolved administratively by the MTA in an economical and expeditious manner. "Interested party", as used in this Chapter, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

**23.1 Written Submission**

- A. An interested party wishing to protest a matter involving a proposed procurement or contract award shall file with the Contracting Officer, a written submission covering, at a minimum the following:
  - 1. The name and address of the interested party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party;
  - 2. Identification of the proposed procurement or contract;
  - 3. Description of the nature of the protest;
  - 4. Identification of the provision(s) of the solicitation, regulations, or laws upon which the protest is based, i.e., identification of the technical specifications or item of content in the solicitation;
  - 5. All documentation supporting the allegations in the protest;
  - 6. Statement of the specific relief requested.
- B. The protest should also reference any pertinent court, GAO and agency decisions, which are relied upon in support of the protest, as well as any contrary authority. Any documents relevant to the protest should be attached to the written submission. Factual allegations in the written submission must be supported by affidavit included with the written submission. The Contracting Officer may decide the protest without requesting further submission(s) from the party submitting the protest. Thus, the initial protest submission should include all matters, which the party wishes the Contracting Officer to consider in deciding the protest.

**23.2 FTA Notification**

The FTA shall be notified upon the receipt of a protest on a Federally Funded Procurement.

**23.3 Time For Filing**

- A. The initial protest submission directed to the terms, conditions, or form of a proposed procurement action must be received by the MTA not later than ten (10) calendar days after the date the IFB or RFP is advertised.
- B. The Contracting Officer shall in all cases issue a recommendation for award notice on all new procurement actions in excess of the small purchases threshold (of \$40,000 and \$25,000 for Construction). Upon issuance, the recommendation for award notice shall be mailed to all successful and unsuccessful Proposers/Bidders. The issuance of the recommendation for award notice will begin the period for filing a protest concerning an award decision.
- C. For protests concerning award decisions, the initial protest submission must be received by the MTA not later than fifteen (15) calendar days after issuance of the MTA's recommendation for award notice.
- D. Initial protest submissions received by the MTA after the time periods specified above shall be deemed by the Contracting Officer to be untimely and **may** be denied on that basis unless the Contracting Officer concludes that the issue(s) raised by the protest involves fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement process.

**23.4 Solicitation/Pre-Award/Post-Award Protests****A. Solicitation**

1. When a protest against the terms, conditions, or form of a proposed procurement action (IFB or RFP) is received and the date for receipt of bids or proposals may be extended to accommodate the resolution of the protest, the list of planholders (Offerors) for the solicitation should be informed of the protest. An addendum to the IFB or RFP shall be issued to extend the date for receipt of bids or proposals.

**B. Award Protests**

1. When a protest against the making of an award is received the award will be withheld pending disposition of the protest, the offerors whose offers might become eligible for award should be informed of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for re-solicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award if one of the following conditions is met:
  - a. The supplies or services to be contracted for are urgently required;
  - b. Delivery or performance will be unduly delayed by failure to make award promptly;
  - c. A prompt award will otherwise be advantageous to the MTA.



2. With respect to protests received after award, the Contracting Officer need not suspend contract performance or terminate the awarded contract unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the MTA's interest. In this event, the Contracting Officer should consider seeking a mutual agreement with the contractor to suspend performance on a no cost basis.

C. Course Of Action

1. The time allowed by the Contracting Officer for response from other offerors, depends upon the nature and complexity of the protest but, except in extraordinary circumstances, shall not exceed ten (10) calendar days from the date the protest submission is received by such other interested parties. The decision to contact other offerors is at the sole discretion of the Contracting Officer.
2. The Contracting Officer shall require that a copy of any response be provided to the party initially filing the protest and may, in his/her sole discretion, request or permit additional submissions from any party. The period for receipt of final submissions from any party, except in extraordinary circumstances, shall not extend beyond twenty (20) calendar days from receipt by the Contracting Officer of the initial protest submission.
3. The Contracting Officer shall excise from any submission from any party information which has been identified as proprietary, and which, in his/her judgment, constitutes confidential or proprietary materials or materials which would give a party a competitive advantage, prior to furnishing such submission to any other party unless the person furnishing the information consents, in writing, to distribution of the information to other interested parties.
4. The Contracting Officer may on his/her own initiative or at the suggestion of any interested party, request a conference among all interested parties if it is deemed a conference to be beneficial to resolution of the protest.
5. If the Contracting Office is unable to resolve the protest, he/she may establish a Review Team to evaluate the merits of the protest. The Team shall review the basis of the protest, including all relevant information and within reasonable time of its receipt render a decision to concur with or deny the protest.

**23.5 Closing The Record-Decision**

- A. Upon receipt of final submissions or upon conclusion of any conference among the parties, the record will be considered closed unless the Contracting Officer requests additional submissions.
- B. Except in extraordinary circumstances, the Office of Procurement Contracting Officer shall issue a written decision on the protest within forty-five (45) working days from receipt of the initial protest submission. Recommendations regarding protests must be approved at the Procurement Director level. All protest responses will be reviewed by Procurement Compliance to ensure all protest issues have been addressed. The response is also reviewed to insure it is consistent with established MTA policy or to determine whether additional





MTA policy clarification is needed. Contract award recommendations will indicate if an award was subject to protest and the outcome. If the protest and appeal periods have not expired, all contract award recommendations shall indicate that the award is subject to protest and resolution.

- C. In the event the decision is to deny the protest, the interested party may appeal the decision by filing a written appeal with the Chief Executive Officer within five (5) calendar days by personal delivery, including confirmed delivery by fax, restating the basis of the protest and the grounds for the appeal. The appeal shall only contain factual information previously provided in the protest or discovered subsequent to the Contracting Officer's decision and directly related to the grounds of the original protest.
- D. The Chief Executive Officer, in the best interest of the MTA, may decide to continue with the award and acquisition subject to resolution of the appeal.
- E. The Chief Executive Officer shall evaluate the appeal and issue a written decision, within a reasonable time of its receipt, to concur with or deny the appeal. If the Chief Executive Officer's decision overturns staff's recommendation on: (1) contract awards not requiring MTA Board approval, the Chief Executive Officer's decision is final; or (2) contract awards requiring MTA Board approval, staff reports shall be revised to reflect the Chief Executive Officer's decision.
- F. For those contracts under the CEO's awarding authority established by PUC 130051.9, a protest review committee will be established. The committee will consist of the CEO/COO, Executive Officer of Procurement, and County Counsel.
- G. Procurement actions under PUC 130238 or 20217.3 provide that protesters have an opportunity to appear and be heard before the Board prior to opening of proposals in the case of protest based on the content of the request for proposals, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the request for proposals.

### **23.6 Action Pending Protest Decision**

- A. Where a timely protest has been filed prior to opening of bids or receipt of proposals and unless the protest is resolved by the Contracting Officer prior thereto, the date of receipt of bids or proposals shall be extended to accommodate the time needed for resolving the protest and instituting any necessary remedial measures.
- B. Where bids have been opened or proposal received prior to the receipt of a timely protest, award shall not be made prior to five (5) working days after the resolution of the protest, unless the Contracting Officer documents and determines that one of the conditions set forth in this Chapter applies.
- C. In the event it is determined to be in the MTA's interest to proceed with the contract award pursuant to the section above, the Contracting Officer shall assure that the appropriate MTA officials approve the award decision with appropriate justification.

Should the Contracting Officer determine that award should not be withheld as specified in the section above, he/she shall notify FTA of the proposed action and the reasons therefore.

**23.7 Remedy**

- A. A decision by the Contracting Officer that a protest is meritorious may, depending on the circumstances and as the Contracting Officer deems appropriate, result in one or more of the remedies provided in the sections below.
- B. Change in the terms, conditions or form of the procurement. This remedy is appropriate where the procurement, if not changed, has a high likelihood of unfairly restricting competition or is in violation of requirements established in the MTA's Procurement Manual or in other applicable regulations or standards issued by the Federal Government.
- C. Rejection of bid or proposal. This remedy shall be used only where the record establishes convincingly that a bid or proposal legally cannot be accepted or, where Contracting Officer discretion is involved, that the rejection has a rational basis.
- D. Cancellation of solicitation and re-procurement. A solicitation may be canceled prior to disclosure of prices where the Contracting Officer determines it is in the MTA's interest to do so (e.g., where it does not adequately state the MTA's needs and extensive revision is necessary to effect correction) or necessary to assure fair and equal competition. After prices are disclosed, the solicitation may be canceled only where there is a substantial reason (e.g., all prices are excessive, specifications are defective) for cancellation. Cancellation of a solicitation based upon excessive prices shall require concurrence of the Board of Directors.
- E. Award to party filing protest. This remedy may be used only where all more favorable bids or proposals are rejected and the party is otherwise eligible for award.
- F. The MTA shall consider any such remedy that the Contracting Officer may deem appropriate and in the best interest of the MTA which still provides fair and equal consideration in the selection of successful contractor.

**23.8 Protests Filed With FTA**

- A. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or alleged failure to follow such procedures and only when an interested party submits such protests. The contracting office will assure that prospective bidders and offerors are notified about the FTA protest requirements by including appropriate language in solicitations and invitations for bids.
- B. The Chief Executive Officer, in the best interest of the MTA, may decide to continue with the award and acquisition subject to resolution of the FTA protest. FTA shall be notified prior to award, if such a determination is made.



**23.9 Authority Administration Of Protests**

- A. The Office of Procurement shall assign Contracting Officers to conduct the administrative processing of protests filed with the MTA or with FTA. Assigned contract administrators shall, as a minimum, assure distribution of protest submissions and responses, coordination of staff evaluation of the protest, compliance with the time limits stated herein and maintenance of all documents related to the protest.
- B. The Contracting Officer shall request the County Counsel to review and advise the Contracting Officer concerning any legal issues involved in protests.
- C. Unless otherwise directed by the Contracting Officer, the contract administrator assigned by the Contracting Officer to conduct the administrative processing of a protest shall be the only person authorized to discuss the administrative processing of the protest with persons outside the MTA. Any oral or written inquiry received within the MTA should be immediately referred to the Contracting Officer who will assure the appropriate response.
- D. The Contracting Officer shall obtain concurrence from the County Counsel prior to release of any documents concerning the protest to any person outside the MTA.

**23.10 Notice Of Protest Policy Requirement**

Protest provisions consistent with the guidance in this Chapter will be included as an instruction in all IFBs and RFPs, except procurements under the small purchases threshold:



## **24.0 Purpose And Scope**

- A. The MTA, as a recipient of federal assistance, is required to implement as part of its contracting program, a variety of federal laws and regulations regarding contractor labor relations, affirmative action for qualified handicapped individuals, domestic preference and environmental protection programs, an inspection and verification procedure to ensure compliance with the MTA's specifications, Federal motor vehicle safety standards, and Buy America requirements.
- B. This Chapter prescribes some of the applicable Federal laws and regulations for MTA contracts and purchases, and where appropriate, indicates the specific contract types and dollar thresholds requiring contractual coverage.
- C. MTA Contracting Officers will assure that the required provisions are included in all appropriate solicitations and contracts.
- D. The following section represents the most frequently used Grantee Requirements, but is not intended to be an all-inclusive listing. Contracting Officers are encouraged to refer to the FTA Best Practices website for a current listing of Grantee Requirements.

## **24.1 Contractor Labor Requirements**

### **24.1.1 Equal Opportunity**

MTA Contracting Officers working with the Office of Equal Opportunity Programs Department shall include required equal employment opportunity provisions for contracts in excess of the small purchase thresholds and shall assure contractor compliance with those provisions. The equal employment opportunity provisions are those authorized by Executive Order Number 11246 dated September 24, 1965 and further implemented by 41 CFR 60-2, as amended and issued by the Department of Labor. These provisions will include the requirements of Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and Sections 503 and 504 of the Rehabilitation Act of 1973.

### **24.1.2 Work Hours And Safety**

All contracts in excess of two thousand dollars (\$2,000) for construction and other contracts in excess of two-thousand-five hundred dollars (\$25,000) which involve the employment of mechanics or laborers shall include provisions for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as implemented by DOL regulations (29 CFR, Part 5). These requirements do not apply to purchase of supplies or materials for articles ordinarily available on the open market. The Contracting Officer shall assure that appropriate safety provisions from OSHA are included as safety requirements in all construction contracts. For contracts involving the revenue rail system, contract work shall comply with the appropriate Safety Rules and Procedures.

### **24.1.3 Copeland "Anti-Kick Back" Act**

All contracts for construction or repair shall include a provision requiring the contractor to comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as implemented by DOL



regulations (29 CFR, Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing by any means any person employed in the performance of the work under the contract or subcontract to give up any part of the compensation to which he is otherwise entitled. The Contracting Officer is responsible for the reporting of all suspected or reported violations.

#### **24.1.4 Davis-Bacon Act**

All MTA construction contracts in excess of two thousand dollars (\$2,000) shall include a provision requiring the contractor to comply with the Davis-Bacon Act (40 U.S.C. 276a-276a-7) as implemented by DOL regulations (29 CFR, Part 5). Contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in periodic wage determinations by the Secretary of Labor. The Contracting Officer is responsible for inserting current prevailing wage determinations issued by DOL in each solicitation requiring Davis-Bacon coverage and for assuring that contract award is conditioned upon the contractor's acceptance of the most recent wage determination. The Contracting Officer should report all suspected or reported violations to FTA.

#### **24.1.5 Walsh-Healey Public Contract Act**

All MTA contracts, which exceed or may exceed ten thousand dollars (\$10,000) and are for the manufacture or furnishing of materials, supplies, articles, or equipment, are subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45). Appropriate provisions and representations will be included in all eligible MTA contracts to assure that these contracts are with manufacturers or regular dealers for the supplies manufactured or used in performing the contracts.

#### **24.1.6 Convict Labor**

The Contracting Officer will assure that all contracts include the contract provision requiring the contractor to agree not to employ any person during their terms of imprisonment, except as provided by PL 89-176, (18 U.S.C. 4082(c)(2)).

#### **24.1.7 Notice Of Labor Disputes**

- A. The Contracting Officer will require MTA contractors and sub-contractors to provide notice to the MTA of labor disputes in accordance with the appropriate contract provisions to be included in construction and supply and service contracts.
- B. If necessary, the MTA may provide internal procedures as part of this Manual or other instructions to cover the enforcement and notification requirements of the contractor labor requirements outlined above.

### **24.2 Labor Surplus**

When appropriate, the MTA will comply with FTA and DOL regulations pertaining to utilization of the federal labor surplus program.

### **24.3 Federal Policies For Elderly And Handicapped**

- A. As required by FTA, the MTA shall assure that contracts for vehicle and facilities acquisition include appropriate accessibility for the elderly and disabled pursuant to Section 504 of the Rehabilitation Act of 1973 as implemented by 49 CFR, Part 27.



- B. As required by FTA, the MTA shall also assure that construction contracts comply with the GSA specifications as prescribed by 41 CFR 101-10.6, Accommodations for Physically Handicapped.
- C. In addition to the above requirements, Contracting Officers shall assure that all contract specifications comply with federal access requirements for individuals with disabilities in accordance with the Americans with Disabilities Act of 1990 (ADA) and implementing federal regulations.

#### **24.4 Federal Foreign Trade Requirements - Buy America**

- A. The MTA shall comply with Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601 as amended, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 as amended, and 49 CFR, Parts 660-661, which impose Buy America Provisions on the procurement of foreign products and materials. MTA Contracting Officers shall assure that federal Buy America requirements are observed in accordance with the following:
  - 1. All MTA solicitations shall include the requirement for bidders to certify they will comply with the above laws and regulations, as amended.
  - 2. 49 CFR Part 661 provides for waivers to be granted by FTA based upon justified applications requested by the MTA or in some cases, by the potential bidders. MTA Contracting Officers shall assure that MTA requests for waiver shall meet the conditions required by 49 CFR Part 661.7. Requests for waivers addressed to FTA shall be prepared for signature of the Executive Officer, Office of Procurement and Distribution.
  - 3. MTA solicitations and contracts shall include the appropriate contract provisions required by the above referenced laws and regulations, as may be amended.

#### **24.5 Cargo Preference**

The MTA shall comply with 46 U.S.C. 1241(b) and 46 CFR Part 381 which impose cargo preference requirements for the shipment of goods by privately owned United States-flag commercial vessels. MTA Contracting Officers shall assure that MTA solicitations and contracts include a provision requiring utilization of privately owned United States-flag commercial vessels whenever goods are to be shipped, and to report shipments made to the Department of Transportation, Maritime Administration.

#### **24.6 Environmental And Conservation Requirements**

- A. Federal regulations require the MTA to comply with 40 CFR Part 15 which prohibits the use of facilities included on the EPA list of violating facilities for contracts exceeding one hundred thousand dollars (\$100,000). Contracting Officers shall insert appropriate certifications and provisions in MTA solicitations and contracts to assure compliance with the Clean Air Act (42 U.S.C. 7401) and the Clean Water Act (33 U.S.C. 1251).
- B. MTA procurements that include motor vehicle requirements must assure compliance with 40 CFR Parts 84 and 85, which establish federal emissions, standards for vehicles.



- C. MTA Contracting Officers shall assure that construction and facilities support contracts include all current MTA policies for environmental and conservation requirements, including those energy efficient standards developed to comply with the Energy Policy and Conservation Act (P.L. 94-163).
- D. MTA contractors shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 41 U.S.C. 6321 et seq.
- E. MTA contractors shall make all appropriate efforts to foster the use of fly ash, substantially in compliance with EPA regulations "Guidelines for Federal Procurement of Cement and Concrete Containing Fly Ash", 40 CFR Part 249. A determination that the use of fly ash is inappropriate in a particular procurement of cement or concrete requires a written justification to support that decision. A copy of the justification shall be submitted to FTA.
- F. MTA contractors shall, to the extent practicable and economically feasible, provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products are described in the EPA guidelines at 40 CFR Parts 247-253, implementing the Resource Conservation and Recovery Act as amended, 42 U.S.C. 6962.

#### **24.7 Restriction On Lobbying**

- A. Federal Regulations at 48 CFR Parts 2 and 52, Federal Acquisition Regulation, and 49 CFR Parts 19 and 20, DOT Common Rule, implement the restriction on lobbying and reporting requirements of 31 U.S.C. 1352. Federal rules require that the contractor disclose if other than Federal appropriated funds are used for influencing or attempting to influence a federal transaction. Both the certification that appropriated funds have not and will not be paid, and the disclosure of information when other than appropriated funds have or will be paid for influencing or attempting to influence a federal transaction will be required from LACMTA bidders or offerors for specified "applicable contract actions" that are awarded using federal grant monies authorized for MTA use on or after the effective date of 31 U.S.C. 1352, December 23, 1989.
- B. For purposes of this requirement, an "applicable contract action" will include a new contract award or change-in-scope modification in excess of one hundred thousand dollars (\$100,000) which can be identified as being a federally funded transaction resulting from a federal grant to the MTA on or after December 23, 1989.
- C. IFB/RFP actions must include the certification and disclosure form entitled "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Jan. 1990)" and the contract provisions entitled "Limitation on Payments to Influence Certain Federal Transactions (Jan. 1990)".

#### **24.8 Energy Efficiency Standards**

MTA contractors shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

**24.9 Audits Of Rolling Stock Purchases**

Contracting Officers shall assure compliance with FTA regulations at 49 CFR Part 663. These regulations apply to the purchase of rolling stock for carrying passengers in revenue services. Pre-award and post delivery audits are required to assure compliance with the MTA's bid specifications, Buy America, and Federal Motor Vehicle Safety requirements. The MTA must certify compliance and must maintain records of the certification. Records are subject to FTA review.

**24.10 Privacy Act Regarding Federal Records**

Contracting Officers shall assure that appropriate restrictions required by the Privacy Act of 1974, 5 U.S.C. Paragraph 552 a are included in any MTA contract requiring the administration of a system of records on individuals on behalf of the Federal Government.

**24.11 Additional Federal Integrity Provisions**

- A. Contracting Officers shall insert a "Conflict of Interest" provision in all MTA contracts to assure a contractor avoidance of conflict of interest situations in the performance of contract duties by the contractor and his affiliates.
- B. Contracting Officers shall insert the required federal provision entitled "Officials Not to Benefit" in all MTA contracts.

**24.12 Drug And Alcohol Testing**

- A. MTA contractors who perform safety-sensitive functions are subject to compliance with a drug and alcohol-testing program according to Federal guidelines published in FTA regulations (49 CFR Part 653 and 654).
- B. MTA departments and offices responsible for technical administration of contracts will coordinate with the Contracting Officer on the identification of all applicable contracts and proposed contracts requiring safety-sensitive functions. MTA Contracting Officers shall assure that the required Federal testing requirements specified by the requesting activity are included in all applicable contracts.

**24.13 False Or Fraudulent Statements And Claims**

MTA contractors are subject to the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31. Accordingly, when a contractor signs an MTA contract, the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the requirements of the contract. The contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, penalties of the Program Fraud Civil Remedies Act of 1986, as amended will apply as deemed appropriate.

**24.14 Geographic Restrictions**

MTA contractors shall refrain from using state or local geographic preferences, except those as permitted by FTA for Architect-Engineer, Design or related services, in MTA solicitations or and contracts.





**24.15 Seismic Safety**

MTA contractors shall include the U.S. DOT regulations applicable to seismic safety requirements found at 49 CFR Part 41, 41.117 and any implementing FTA guidelines in all constructions contracts.

**24.16 Access To Records**

Contracting Officers shall assure compliance with FTA regulations at 49 CFR 633.15. These regulations stipulate the requirements for access to records which must be in MTA awarded contracts.

**24.17 Transit Employee Protective Agreements**

Contracting Officers shall ensure compliance with FTA requirements at 49 U.S.C. 5333(b) and 29 CFR Part 215 in all transit operations performed by employees of a contractor recognized to be a transit operator.

**24.18 Bus Testing**

Contracting Officers shall assure compliance with FTA regulations at 49 CFR 665 concerning bus testing requirements for rolling stock working acquisitions.

**24.19 Charter Bus Requirements**

Contracting Officers shall assure compliance with FTA regulations at 49 CFR 604, which provides that recipients and sub-recipients are prohibited from providing charter services using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide such service, except under one of the exceptions at CFR 604.9.

**24.20 Federal Changes**

Contracting Officers shall assure compliance with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the Master Agreement, as they may be amended or promulgated during the term of the Agreement. MTA's failure to so comply shall constitute a material breach of the Agreement.

**24.21 Historic Preservation**

Contracting Officers shall assure compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470F, involving historic and archaeological preservation by consulting with the State Historic Preservation, officer to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places and by mitigating adverse environmental effects.

**24.22 Officials Not To Benefit**

Contracting Officers shall assure compliance with 41 U.S.C. 22, which requires that most contracts explicitly state that no member of Congress shall benefit from any contract awarded by the MTA.



**ACCEPTANCE**: The formal written acceptance of an offer by the MTA.

**ACTUAL COSTS**: Costs incurred by a contractor in the performance of work on a contract, as distinguished from forecasted or estimated costs.

**ADVANCE COST AGREEMENT**: An agreement between the MTA and a contractor concerning the treatment of special or unusual costs which are expected to be incurred.

**ADDENDUM/ADDENDA**: Written interpretation(s) or revision(s) to Invitations for Bids or Requests for Proposals issued by the MTA before the bid opening or proposal receipt, which are incorporated into the Contract Documents.

**ALLOWABLE COSTS**: Costs of a contractor determined to be reimbursable on a cost reimbursement contract or usable in pricing a fixed price contract based on reasonableness, allocability, and generally accepted accounting principles and practices appropriate to the particular circumstances.

**APPROVED EQUAL**: A substitute offered by a prospective Bidder which is accepted by the MTA, in accordance with applicable law, and procedures stipulated in the Solicitation Documents as equal to or better than a designated process or manufacturer's brand-name product.

**BID**: Offer of a Bidder to provide goods, services or work in response to an Invitation for Bids. For Public Works contracts, it is defined by statute (Public Contracts Code, Section 5100) as any proposal submitted to a public entity for the construction, alteration, repair or improvement of any structure, building, road or other improvement of any kind.

**BIDDER**: Any individual, firm, partnership, corporation, or combination thereof submitting an offer for the work solicited in an Invitation for Bids, acting directly or through a duly authorized representative.

**BIDDERS FILES**: A compilation of identification of prospective Bidders, the names and addresses of which are recorded according to subject matter, obtained from requests for inclusion in the Bidders List Files, listings of bid package holders and bidders and bidders of previous procurements, minority business directories, Yellow Pages, and sources suggested by technical staff and consultants.

**BIDDERS LIST**: A compilation of names of prospective Bidders for a particular solicitation consisting of firms that requested and/or were sent a copy of the Solicitation Package.

**BID SOLICITATION PACKAGE**: A set of documents issued by the MTA for the intended work, which includes but is not limited to the Invitation Letter, Information for Bidders, Standard Contract Terms and Conditions and Special Terms and Conditions, and if required, Contract Drawings, Technical Specifications, Addenda (if any) the Bid Form and Forms of Bonds (if any)

**BID OPENING OFFICER**: Individual to whom authority has been delegated to receive and open Bids and Proposals. The overall responsibility resides with the Executive Officer, Procurement .

**BID SAMPLES**: Sample required by the Invitation for Bids, to be furnished by a Bidder as part of its Bid to show the characteristics of a product offered in its Bid to assure procurement of an acceptable product. These samples are required only when there are certain characteristics of the product which cannot be adequately described in the Specifications.

**BID SECURITY**: A required certified or cashiers check, cash or Bid Bond accompanying the bid submitted by the Bidder, as a guarantee that the Bidder will enter into a contract with the MTA for the performance of the work and that it can and will obtain the required bonds and insurance if the contract is to be awarded to the Bidder.

**BID TABULATION (BID SUMMARY SHEET)**: The written record of prices and other relevant information pertaining to the Bids submitted in response to a Bid Solicitation Package. (The Bid Summary Sheet is filled in at the Bid Opening and serves as the Bid Tabulation unless not all relevant prices can be read at the time of bid opening in which case a more detailed Bid Tabulation providing all unit and extended prices, is prepared after Bid Opening).

**BLANKET PURCHASE ORDER**: A pre-contractual agreement with a vendor that establishes an agreement for the purchase of supplies or services, which allows the MTA to make small purchases without the issuances of, a purchase order for each individual purchase. Payments are made on a monthly basis.

**BOARD OF DIRECTORS**: The governing body of the MTA consisting of a Chairman and thirteen members who exercise and perform all powers, duties, functional, rights, and privileges vested in the Los Angeles County Metropolitan Transportation Authority pursuant to the MTA's governing law.

**BRAND NAME PRODUCT**: A commercial product described by brand name and make, model number, or other appropriate nomenclature by which the product is offered for sale to the public by the particular manufacturer, producer or distributor. The brand name is used by the MTA only for the purpose of establishing identification and a general description of the item and to establish the essential, salient characteristics of an item to be acquired.

**CAPITAL EQUIPMENT**: Equipment having a useful life of at least one (1) year, which costs a minimum of \$5,000.

**CERTIFIED COST AND PRICING DATA**: All facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Certification requires the proposer/contractor to certify such data as being current, accurate and complete as of the day price agreement is reached.

**CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE**: A contractor certified as a disadvantaged business enterprise by the Office of Equal Employment Programs Department, City of Los Angeles, Caltrans or the Regional Transit Coordinating Council.

**CHANGE NOTICE**: For public works contracts, a written notice issued to the Contractor by the Contract Administrator specifying a change in the work within the general scope of the contract. The MTA may issue a Change Notice, which is a request for Contractor's proposal that may result in a Change Order.

After the Contracting Officer issues a unilateral change order, the Contracting Officer and the contractor shall execute a separate bilateral modification reflecting the resulting equitable adjustment in contract terms.

**CHANGE ORDER:** A written unilateral document issued by the MTA incorporating changes in the work and/or adjustments in the total contract price and schedule.

**COMPETITIVE NEGOTIATIONS:** The procurement process by which a Request for Proposal is issued, soliciting proposals from a number of sources, and negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost type Contract is awarded.

**COMPETITIVE RANGE:** Parameters, which include all, offers in response to an RFP that have a reasonable chance of being selected for award based on cost or price and other factors that were stated in the solicitation.

**CONSULTANT:** A firm or individual, which is awarded a contract for specialized services and advice in financial, economic, accounting, engineering, legal or administrative matters who are specially trained, experienced and competent.

**CONSULTANT CONTRACT - (INCLUDING ALL MODIFICATIONS AND SUPPLEMENTS THERETO):** A contract that the MTA awards for specialized services.

**CONTRACT:** A written agreement executed by the MTA and an individual or firm which thereby becomes the Contractor. The contract sets forth the rights or obligations of the parties in connection with the furnishing of goods or services (including construction).

**CONTRACT ADMINISTRATION:** A system for ensuring that Contractors conform to the terms, conditions, and specifications of the contract and for the conduct of any MTA administrative requirements during the life of the contract (see Chapter 2).

**CONTRACT CLOSEOUT:** A formal process ending the life of a contract, including the resolution and closeout of any open issues related to payment and services. The closeout indicates that required services have been rendered to the MTA and that all payments for such services have been received.

**CONTRACT DRAWINGS:** The plans, showing locations, character, dimensions of the work to be performed under the contract, pursuant to the contract specifications or amendments thereto.

**CONTRACT MODIFICATIONS:** Written alterations in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provision of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by a mutual action of the parties to the contract. It includes both bilateral actions and also unilateral actions such as Change Orders and notices of the exercise of an option.

**CONTRACT SCOPE:** A brief narrative of the objectives of the contract which is expanded in the Scope of Work.

**CONTRACTING OFFICER:** The Chief Executive Officer (CEO) or such person(s) as the CEO shall designate in writing to act on the CEO's behalf, having authority to authorize contract actions. Whenever the term "Contracting Officer" shall appear in this document, the term shall also include authorized designee(s). (The authority of the designees varies significantly depending on the value and type of procurement action). See Chapter 2.

**CONTRACTOR:** The person or organization identified as being the other party to a contract with the MTA.

**COST ANALYSIS:** Review and evaluation of cost data submitted by an offeror in support of a contract price, or a contractor in support of a contract modification, including review and evaluation of the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion of the degree to which the proposed costs represent what performance should cost.

**COST CONTRACT:** A cost-reimbursement contract under which the contractor receives no fee.

**COST-PLUS-FIXED FEE:** A cost-reimbursement type contract which provides for the payment of a fixed fee to the Contractor. The fixed fee, once negotiated, does not vary with actual cost, but it may be adjusted as a result of any subsequent changes to the work or services to be performed under the contract.

**COST-REIMBURSEMENT CONTRACT:** A contract, which provides for payment of allowable costs incurred in the performance of a contract to the extent prescribed in the contract. This type of a contract establishes an estimate of total cost for the purpose of obligating funds, and establishes a ceiling which the contractor may not exceed (except at its own risk) without prior approval of, or subsequent ratification by, the Contracting Officer.

**DEBARMENT:** A Federal process whereby the U.S. Comptroller General compiles a list of persons or firms not eligible for contract award if Federal funds are involved.

**DESCRIPTIVE LITERATURE:** Information such as catalog cuts, illustrations, drawings, and brochures which show the characteristics of construction of a product or explain its operation. The Descriptive Literature may be furnished by a Bidder or Offeror as part of its Bid to describe the products offered in its Bid or Proposal and required only when the MTA deems such literature is needed to enable it to determine whether the products offered meet the specifications and to establish exactly what the Bidder proposes to furnish.

**DETERMINATIONS AND FINDINGS (D&F):** A document created for the Contract file to record all the facts that form the basis for an important decision affecting a procurement or contract action.

**DISADVANTAGED BUSINESS ENTERPRISE:** A for - profit small business concern which is at least 51% owned by one or more socially and economically disadvantaged individuals or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOL:** U.S. Department of Labor.

**DOT:** U.S. Department of Transportation.

**EQUAL:** A substitute for a brand name product identified in the specifications which is offered by a prospective Bidder and which is accepted by the MTA, in accordance with procedures stipulated in the Solicitation Documents, as equal to or better than a manufacturer's brand-name product.

**FTA:** Federal Transit Administration.

**FINAL ACCEPTANCE:** Final acceptance of the work under a contract occurs when the work is fully, completely, and finally accomplished in full, absolute, and strict compliance with the contract documents.

**FIRM FIXED PRICE CONTRACT:** A fixed price contract provides a price that is not subject to any adjustment on the basis of the contractor's cost experience in fulfilling the contract terms. This type of contract places maximum risk and full responsibility for all costs and resulting profit or loss upon the contractor, and provides maximum incentive for the contractor to control costs and performance effectively.

**FORMAL ADVERTISING (SEALED BIDDING):** The procurement process by which sealed bids are publicly solicited and a firm-fixed-price Contract (lump sum or unit price) is awarded to the Responsible Bidder whose Bid, conforming with all the material terms and conditions of the Solicitation Package, is lowest in price.

**GRANTEE:** The MTA or other party if specifically described as such in its role as a recipient of an outside source of funds, usually Federal funding.

**IMPROPER INFLUENCE:** Any influence that induces or tends to induce an MTA employee or officer to give consideration or to act regarding an MTA contract on any basis other than the merits of the matter.

**INCENTIVE CONTRACT:** A fixed-price or cost-reimbursement type contract that provides for relating the amount of profit or fee payable under the contract with the contractor's performance in order to obtain specific procurement objectives.

**INDEFINITE-QUANTITY CONTRACT:** A contract that provides for an indefinite quantity, within written stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. The contract requires the MTA to order and the contractor to furnish at least a stated minimum of supplies or services.

**INDIVIDUAL SURETY:** A person, as distinguished from a business entity, who is liable for the entire penal amount of a bond.

**INSTRUCTION TO BIDDERS:** The portion of the solicitation documents which provides prospective bidders with instructions for submitting bids.

**INSURANCE:** A contract that provides that, for a stipulated consideration, the insurer undertakes to indemnify the insured party against risk of loss, damage, or liability arising from an unknown or contingent event.

**INVENTION:** Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the U.S. Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

**INVITATION FOR BIDS (IFB):** An advertised competitive solicitation for fixed price bids. Awards are made to the responsive, responsible bidder that submits the lowest price.

**JOINT DEVELOPMENT:** A project that involves the disposition, by lease or by sale, of incremental transit authority-owned or controlled real property interest at or near a station area which, because of proximity to station facilities, have significant potential for commercial, residential, or related development, alone or in combination with adjoining real property interests to further MTA development-related goals and objectives.

**LABOR-HOUR CONTRACT:** A contract that is a variant of the time and materials type contract differing only in that the contractor does not supply materials.

**LETTER CONTRACT:** A written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing or delivering supplies or performing services. The Letter Contract will rarely contain prices of the supplies or services, and it will be converted to a definitive contract with the time period specified in the Letter Contract.

**LIQUIDATED DAMAGES:** An amount fixed in the contract, which is assessed against a Contractor when it breaches, the delivery provision of a contract (e.g., it fails to complete delivery, installation, services, or the work specified in a contract within the contract period of performance or schedule) where the extent of actual damages would be difficult or impossible to determine. Liquidated damages are a predetermined, set amount and are included in the contract in lieu of attempting to measure actual damages. Liquidated damages, as predetermined, are assessed even if there are no ascertainable damages or greater damages as a result of the contractor's failure to perform in accordance with contract requirements.

**MATERIAL COSTS:** Costs of items such as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, which may include such collateral items as inbound transportation and in transit insurance.

**MTA:** The Los Angeles County Metropolitan Transportation Authority.

**MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM (MBE/WBE):** An MBE enterprise is at least 51 percent owned by one or more members in the following presumptive groups: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian-Indian Americans and Women regardless of race, ethnicity or origin. A WBE enterprise is at least 51 percent owned by one or more women; and one or more women who own it control its management and daily business operations.

**NEGOTIATION:** Negotiation is a procedure that includes the receipt of proposals from offerors. It permits bargaining, and usually affords offerors an opportunity to revise their offer before award of a contract.

**NEGOTIATION MEMORANDUM:** A memorandum prepared by the Contracting Officer at the conclusion of each negotiation, detailing the elements of negotiation (special clauses, specifications, costs, etc.)

**NON-COMPETITIVE NEGOTIATION:** The procurement process by which a proposal is solicited from only one source (either a sole source or a source providing critical advantages) or, after solicitation of multiple prospective sources, only one source submits a proposal; negotiations are held with the source; and a contract is awarded.

**NOTICE OF AWARD (NOA):** Letter issued to the successful bidder stating that the contract has been awarded to it and stating the effective date of the contract. For non-construction contracts, the Notice of Award usually authorizes the Contractor to commence performance; for construction contracts, the Notice of Award is usually simply a notification and does not necessarily authorize the contractor to commence work. Usually the MTA must issue a Notice to Proceed before the Contractor is authorized to begin work.



**NOTICE TO PROCEED:** Written direction to commence delivery, installation, services, or the work provided for in the Contract. It is sent to the Contractor post award and states that the Contractor is authorized to commence work as of a specific date. Used primarily for construction contracts and/or when the Contractor must provide permits or other documents or information to the MTA after award but prior to commencing all or a portion of the work. The term is also used with regard to consultant contracts, in a manner synonymous with "Notice of Award", authorizing the Consultant to commence work.

**OFFER:** A response to a solicitation promising to conform to its mandatory requirements that, if accepted, would bind the offeror to perform the resultant contract.

**OVERHEAD:** Costs, which cannot be specifically identified by a Contractor as definitely attributable to Contract work, usually, the general costs of running the business.

**PAYMENT BOND (LABOR AND MATERIAL):** A bond assuring payment by the prime contractor as required by law of all subcontractors supplying labor and material in the execution of the work provided for under a contract, which exceeds \$25,000.

**PERFORMANCE BOND:** A bond securing fulfillment of all the Contractor's obligations under a contract, generally by paying a penal amount specified or by completion of the work.

**PERIOD OF PERFORMANCE:** The period of performance is the period of time allowed in the contract documents for completion of the work from the effective date through the final date.

**PERSONAL SERVICES CONTRACT:** A contract under which a person or a firm is hired for the primary purpose of obtaining the benefit of its professional knowledge, skills, or expertise.

**POSTMARK:** A printed, stamped, or otherwise placed impression (exclusive of a postage meter impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service.

**POWER OF ATTORNEY:** The authority given to a person or corporation to act for and obligate another as specified in the instrument creating the power. In corporate suretyship, an instrument under seal, which appoints an attorney-in-fact to act on behalf of a surety company in signing, bonds.

**PRE-BID/PRE-PROPOSAL CONFERENCE:** A conference during which representatives of the Office of Procurement, the Originating Department, Project Manager, Equal Opportunity, and (if needed) Legal Department discuss questions posed by prospective bidders or proposers regarding the preparation of their bids or proposals. Responses to questions raised (if any) are formalized and distributed to all holders of Bid Solicitation Documents.

**PRE-CONSTRUCTION MEETING (KICKOFF MEETING):** For a construction project, a meeting with representatives of the Contractor and the MTA after award and before beginning the construction work. "Kickoff meeting" is also used to mean a meeting convened by the Procurement and attended by the Selection Committee which will include a brief presentation by the Project Manager on the project Scope of Work for an upcoming consultant procurement.

**PRE-CONTRACT COSTS:** Costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when those costs are necessary to comply with the proposed contract delivery schedule.



**PRE-QUALIFICATION PRE-SOLICITATION PROGRAM:** MTA's program which assures that the MTA enters into contracts only with qualified firms.

**PRE-SOLICITATION ANNOUNCEMENT:** The advertised notice of a proposed solicitation.

**PRICE:** The amount the MTA anticipates it will pay the contractor for full performance under the terms of a contract, including costs and profit.

**PRICE ANALYSIS:** Process of examining and evaluating the reasonableness of a bidder's or proposer's price without evaluation of the separate cost elements and proposed profit of the bidder/proposer.

**PRIME CONTRACTOR:** See "Contractor".

**PROGRESS PAYMENTS:** Reimbursement to a Contractor for costs incurred by it at a percentage or stage of completion of the work, primarily used when the contract requires a long time period for completion of contract performance and there are definitive milestones.

**PROJECT MANAGER:** See Chapter 2.

**PROPOSAL:** A written response to a Request for Proposals, which contains an offer and the information requested by the Request for Proposals.

**PROPOSER:** Any individual, firm, partnership, corporation or combination thereof submitting a proposal for the work solicited by a Request for Proposal or other similar document.

**PROPRIETARY INFORMATION:** Information, including trade secrets, data, formulae, patterns, compilations, programs, devices, methods, techniques, or processes, that has the following characteristics:

- (a) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; or
- (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**PROTEST:** A written objection or complaint by an interested party to the terms, conditions or form of a proposed procurement or the proposed or actual award of a contract (See Chapter 23).

**PUBLIC WORKS:** Any work of improvement of the MTA performed by contractors which supply material or goods and apply or install the work or improvement to constitute an improvement to real property or a fixture thereon, i.e., more than just a "plug in" of moveable goods such as furniture.

**PURCHASE ORDER:** A contractual document in which a promise to pay is offered in exchange for an acceptance effectuated by performance, e.g., the delivering of goods, generally used for inventory replenishment items or other acquisitions for which the MTA assumes a minimum exposure to liability, thereby negating the need for extensive non-standard terms and conditions. In some cases a Purchase Order is bilaterally executed.

**PURCHASE REQUISITION (PR):** A form used by a user department or other authorized user to initiate procurement action for materials, supplies, and/or services.

**QUALIFIED PRODUCTS LIST (OPL)**: An established list of standardized products which assures efficiency, economy, compatibility and/or maintenance reliability of MTA purchased products. (See Chapter 4).

**QUOTATION**: A citation of price and delivery terms or a period of performance by a contractor in response to a Contracting Officer's request on procurements that are within the dollar limits for small purchase transactions permitted by the MTA.

**RECEIVING REPORT**: Written documentation of supplies delivered or services performed as noted by the Contracting Officer or other authorized MTA personnel.

**REQUEST FOR INFORMATION AND QUALIFICATION (RFIQ)**: Term used to describe the competitive selection process when selection is based primarily on the qualifications set forth in the proposal, such as Architectural/Engineering Services and artist selections.

**REQUEST FOR PROPOSAL (RFP)**: The competitive proposal method of procurement. Award is made on a negotiated fixed price or cost reimbursement basis.

**REQUESTING DEPARTMENT (USER)**: The term used for any organizational entity within the MTA that initiates a request for procurement action and that will ultimately benefit from the goods or services acquired.

**RESPONSIBLE BIDDER/PROPOSER**: A bidder/proposer determined by the MTA to have the financial resources, judgment, skill, integrity, experience and ability to successfully fulfill the requirements of the Contract.

**RESPONSIVE BID**: A Bid which conforms to all technical, business and legal requirements of the Bid Solicitation Package, i.e., Invitation for Bids.

**SCOPE OF WORK**: Complete description clearly defining the supplies or services being procured, either through performance specifications setting forth the minimum acceptable performance standards expected of the end product, or through a description of tasks to be performed and products to be delivered.

**SEALED BIDDING**: See Formal Advertising.

**SITE VISIT ALSO ("INSPECTION OF PROJECT SITE")**: MTA conducted tour of project site to acquaint prospective bidders of the existing conditions at the site of the proposed work.

**SMALL BUSINESS ENTERPRISE PROGRAM (SBE)**: An SBE enterprise is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Whose combined net worth of the individuals that own and control the firm does not exceed \$250,000 excluding the value of their personal residence(s) and the value of the applicant firm.

**SMALL PURCHASES**: Services, supplies, equipment and material procurements which do not exceed the small purchase threshold specified by the MTA. Simplified procurement procedures have been adopted for these items.

**SOLE SOURCE CONTRACT:** A contract for the acquisition of goods or services from the only contractor/vendor/consultant capable, authorized, or available to provide the goods or services. A type of non-competitive contract. (See Non-Competitive Negotiation).

**SPECIAL TERMS AND CONDITIONS:** A part of the Contract Document. These clauses set forth legal, business and technical requirements that are particular to a specific contract.

**STAFF SUMMARY SHEET:** Instrument developed to forward material to the Executive Officer and the Chief Executive Officer for information, concurrence or execution.

**STANDARD CONTRACT TERMS AND CONDITIONS:** A part of the Contract Document. These clauses set forth the rights and responsibilities of the contracting parties and are standard in all contracts of a specific type, e.g., construction, purchase or repair.

**SUPPLEMENTAL AGREEMENT:** A written bilateral document, which amends the contract to cause a change in the scope of the contract. If a change would be outside the scope of work either in nature or magnitude but there is sufficient justification to award the change to the original Contractor, a Supplemental Agreement is required. (See Contract Modification).

**SUSPENSION:** An action taken by the Department of Transportation, which disqualifies a contractor temporarily from participation in DOT Financially Assisted programs.

**TECHNICAL EVALUATION MEMORANDUM:** A document prepared by the User Department supporting the analysis of the Bidders/Proposers' technical qualifications and responsiveness to the Solicitation Documents.

**THIRD-PARTY CONTRACT:** As used in Federal guidelines and grants, any contract or contract modification between the MTA and another person or firm. Use of the term is generally limited to a contract which is to be funded in whole or in part by the Federal government. The original grant agreement related to a project or to the work to be performed is entered into between the Federal government or other body and its grantee; if the grantee then contracts to have the work performed by another individual or firm, that contract is referred to as a "third party contract".

**TIME AND MATERIALS CONTRACT:** A type of contract that provides for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include wages, overhead, general and administrative expenses, and profit) and materials at cost.

**TRADE DISCOUNT:** A price allowance or deduction, usually as a percentage allowed to different classes of customers.

**TRADE SECRET:** Information which includes, but is not limited to, formulas, plans, patterns, processes, tools, mechanisms, compounds, procedures, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors.

**TWO-STEP SEALED BIDDING:** A method of contracting designed to obtain the benefits of competitive sealed bidding when adequate specifications are not available.



**UNALLOWABLE COST:** Any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under an MTA contract to which it is allocable.

**UNIT ITEM OVERRUN:** A unit item is a line item bid based upon unit cost times a specified number or measurement. A unit item overrun occurs when the item quantity exceeds the quantity specified in the line item contained in the contract document. Unit item overruns may or may not require a contract modification.

**USER DEPARTMENT (USER):** The term used for any organizational entity within the MTA that initiates a request for procurement action and that will ultimately benefit from the goods or services required.

**U.S. DEPARTMENT OF TRANSPORTATION-FEDERAL TRANSIT ADMINISTRATION:** Federal grantor agency referred to in the Contract documents as "FTA", under whose grants of financial assistance and grant contracts, work or services are performed or materials are provided by third parties.

**WORK:** The completed performance required by the Contract documents, and includes all necessary labor and materials and equipment incorporated or to be incorporated in such performance.

**WORK DIRECTIVES/TASK ORDERS (WD OR TO):** Scheduled or un-scheduled orders to perform specific services, or provide goods, etc. over a specific contract period, for filling the MTA's requirements and used where the MTA anticipates recurring requirements but cannot predetermine precise quantities or services to be provided and it is inadvisable for the MTA to commit itself to a minimum quantity or services to be provided and it is inadvisable for the MTA to commit itself to a minimum quantity or compensation. Funds are obligated by each order (WD or TO), and not by the contract itself. Such orders must be within the general Scope or Work.



# Acquisition Policy and Procedure Manual

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Summary of Revisions

Procedure Section	Revision	Reason	Date
Chapter 1 (Sections 1.0 – 1.7) and; Chapter 2 (Sections 2.0 – 2.3 and 2.5 – 2.7)	Rev. 0	Identified sections are deleted in their entirety and replaced by the Acquisition Policy, ACQ-01	July 16, 2010
Chapter 2 (Sections 2.5 & 2.7)	Rev. 1	Clarified to allow release of prior pricing history during an ongoing procurement.	June 15, 2011

**NOTE:** THIS SUMMARY COVER SHEET IS INTENDED FOR REVIEW PURPOSES ONLY. IT IS NOT INTENDED FOR INTERPRETATION OF POLICY GUIDELINES. REFER TO POLICY DOCUMENT FOR ACTUAL GUIDELINES AND PROCEDURES.

# **EXHIBIT C**



# **LOS ANGELES AERIAL RAPID TRANSIT**

**UNSOLICITED CONCEPT PROPOSAL**

APRIL 25, 2018

April 25, 2018

Dr. Joshua Schank  
Chief Innovation Officer  
Office of Extraordinary Innovation  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

**Re: Proposal to Provide an Aerial Rapid Transit System from Union Station to the Dodger Stadium Property**

Dear Dr. Schank:

We are very pleased to present, on behalf of Aerial Rapid Transit Technologies LLC (the “Proposer”), this “Concept” Unsolicited Proposal to the Los Angeles County Metropolitan Transportation Authority (“Metro”) for an innovative mobility partnership. With private infrastructure investment, our proposed mobility project will reduce vehicle trips and congestion and improve air quality by providing permanent transit access to the Dodger Stadium property. With Metro’s help, we can increase your system’s transit ridership by **directly connecting Los Angeles’s Union Station to the Dodger Stadium property via an aerial rapid transit system (the “Project”)**. This proposal to finance, design, build, operate and maintain the aerial rapid transit (“ART”) system will deliver new transit infrastructure and system connectivity, providing an exciting and innovative way to reduce the existing vehicular congestion around and improve access to Dodger Stadium. ART is a proven, safe, clean, sustainable and highly efficient form of transportation that will serve as both a reliable rapid transit system and an iconic new regional tourist destination in and of itself, offering wonderful views of Los Angeles.

The ART system provides direct benefits to Metro, its passengers and community stakeholders. For Metro, we expect increased transit ridership because the system will be accessed from Union Station, Los Angeles County’s transportation hub. For passengers, ART will introduce a new, quick, and exciting transportation experience, enhancing the visit to Dodger Stadium. For neighbors, the Project will reduce the traffic on the roads in and around Dodger Stadium and surrounding areas.

This proposal is also consistent with Metro’s goals and objectives, including advancing the following Metro Core Business Goals:

- **Promote extraordinary innovation:** This system will use state-of-the-art, zero-emission technology, demonstrating the potential of aerial transit in Los Angeles as a key connector to the regional backbone transit system. It will deliver added transit without impacting Metro’s capital program and will support Metro’s continued nationwide leadership in mobility innovation.
- **Exercise fiscal discipline to ensure financial stability:** The Proposer will create the structure for the financing, design, construction, operation and maintenance of the ART system at no cost to Metro, and will obtain third party financing for the capital construction of the Project.

- **Improve the customer experience and expand access to transportation choices:** Adding to the shuttle bus service currently provided by Metro to Dodger Stadium, this new transportation option will serve significantly more visitors via transit, thus further reducing congestion in the local community and on surrounding regional arterials and freeways.
- **Increase transit use and ridership:** The ART system will substantially boost Metro system ridership by Dodgers fans on game days, and by others, including tourists during the rest of the year. In essence, ART will support Metro’s ambition for people to choose transit for mobility. The ease of attending games, events, and recreational activities through ART will encourage thousands of new “choice rider” trips per year and may encourage more regular ridership.

The Proposer is uniquely capable of delivering the ART project, including the necessary private capital and ability to obtain third party financing for the estimated Project investment of \$125 million.

Additionally, the Proposer has received a commitment from the Los Angeles Dodgers to cooperate with the Project as transportation for Dodger fans to games at Dodger Stadium and other events.

To date, our team has conducted extensive due diligence to assess feasibility and understand risks. Bringing together highly-qualified experts, we have developed a realistic path forward to deliver this ambitious Project by 2022. We respectfully request your review of this Concept Proposal as quickly as possible so that we can quickly move ahead on this exciting project.

Metro’s Office of Extraordinary Innovation was developed to catalyze new and innovative ideas from the private sector to solve vexing mass transit issues in Los Angeles County. Our proposal meets Metro’s criteria for exactly such a project and can serve as a model for an effective partnership that is fiscally responsible and is a unique solution to regional connectivity and access issues. We look forward to initiating discussions about this exciting and transformative project.

Sincerely,



Martha Welborne, Project Director  
Aerial Rapid Transit Technologies LLC

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**The Aerial Rapid Transit system (Project) is a game-changer for Metro and the City of Los Angeles.** The proposed system will directly connect Los Angeles Union Station with Dodger Stadium, not currently served by permanent transit, with an aerial gondola system. ART will serve as a new and privately-funded addition to Greater Los Angeles's rapidly expanding transit and mobility-choice network. The proximity of the Dodger Stadium property to Union Station demonstrates the short distance required – just over 1 mile – for a convenient connection to the regional system's transportation hub. Our Project team is eager to work with Metro through the Office of Extraordinary Innovation's Unsolicited Proposal Process to accomplish this transformative Project.

**ART offers an innovative transportation improvement.** The Stadium's location nestled within the hills of Elysian Park and above the Los Angeles skyline is part of what makes the Dodgers' home so special. As fans come from all over the Los Angeles region to visit, they utilize freeways including the busy State Route 110 as well as local streets around the Stadium for access on a hundred or more days each year, including the regular baseball season, playoff games, and special events. Many visitors rely on existing roadways and surface transportation that can impact the Stadium's adjacent neighborhoods including Chinatown, Angelino Heights, Echo Park, Frogtown, and Solano Canyon. Further encouraging transit ridership, ART will build on the success of transit connectivity provided by Metro's existing partnership through the Dodger Stadium Express from Union Station. The ART system can become an attraction in and of itself that draws more visitors to take Metro transit.

## OBJECTIVES

**Gondola technology is a safe, proven form of rapid transportation.** Though Manhattan's Roosevelt Island is a longstanding urban example of aerial transit, until recent years aerial gondola systems were viewed as primarily useful for mountain resorts. As world cities seek to combat climate change and congestion with innovative new transit approaches, aerial gondola systems are increasingly popular as effective transportation solutions, including recent examples in London, Koblenz, Germany, Mexico City, and South America. This trend reflects the economic benefits and environmentally-friendly characteristics of ART systems, which can be constructed and deployed more expeditiously than fixed light and heavy rail and do not create significant pollution or greenhouse gas emissions. Our proposed system, known as a "3S" Gondola system because it has three cables, is capable of transporting 5,000 or more passengers per hour per direction.

**Thousands of visitors could reach Dodger Stadium via ART** when attending a Dodgers game or event at Dodger Stadium. This in turn will eliminate thousands of automobile trips. Such reductions would greatly improve the flow of traffic for other vehicles as well as reducing the impacts of congestion on nearby freeways and surrounding areas, thereby improving the game-day transportation experience for local stakeholders and visitors.





# TECHNOLOGY AND METHOD OF APPROACH

## INNOVATION AND FEASIBILITY

**Aerial rapid transit systems have been proven as reliable, efficient, and cost-effective rapid transit solutions.** These systems can transport people within dense areas with significant elevation changes where other forms of transit are infeasible or impractical. In addition to the aerial gondola systems found in many mountain resort areas across the United States, two urban aerial transit systems currently exist in the United States: in Portland, Oregon and in New York City, New York. While these existing systems are both safe and successful, neither employs the most recent technology that has been deployed in other cities including Koblenz, Germany. This ART would operate as a Tricable Detachable Gondola (3S) system (the most advanced technology currently available), utilizing high-capacity cabins to efficiently transport passengers.

**Gondola systems, and in particular the 3S system, are incredibly safe, resilient and ecologically-friendly.** The ART system would be built to the most advanced structural and seismic standards and its systems have excellent safety records. This system will be delivered with multiple redundant features to ensure the safety of riders, employees and the general public. Aerial gondola systems are also emission-free, and the ART system would replace many existing car trips that currently occur in congested conditions, helping both Los Angeles and California continue to be global leaders in greenhouse gas emission and associated pollutant reduction. ART ridership would significantly reduce vehicle miles traveled to and from Dodger Stadium, as well as reduce greenhouse gas and associated emissions.

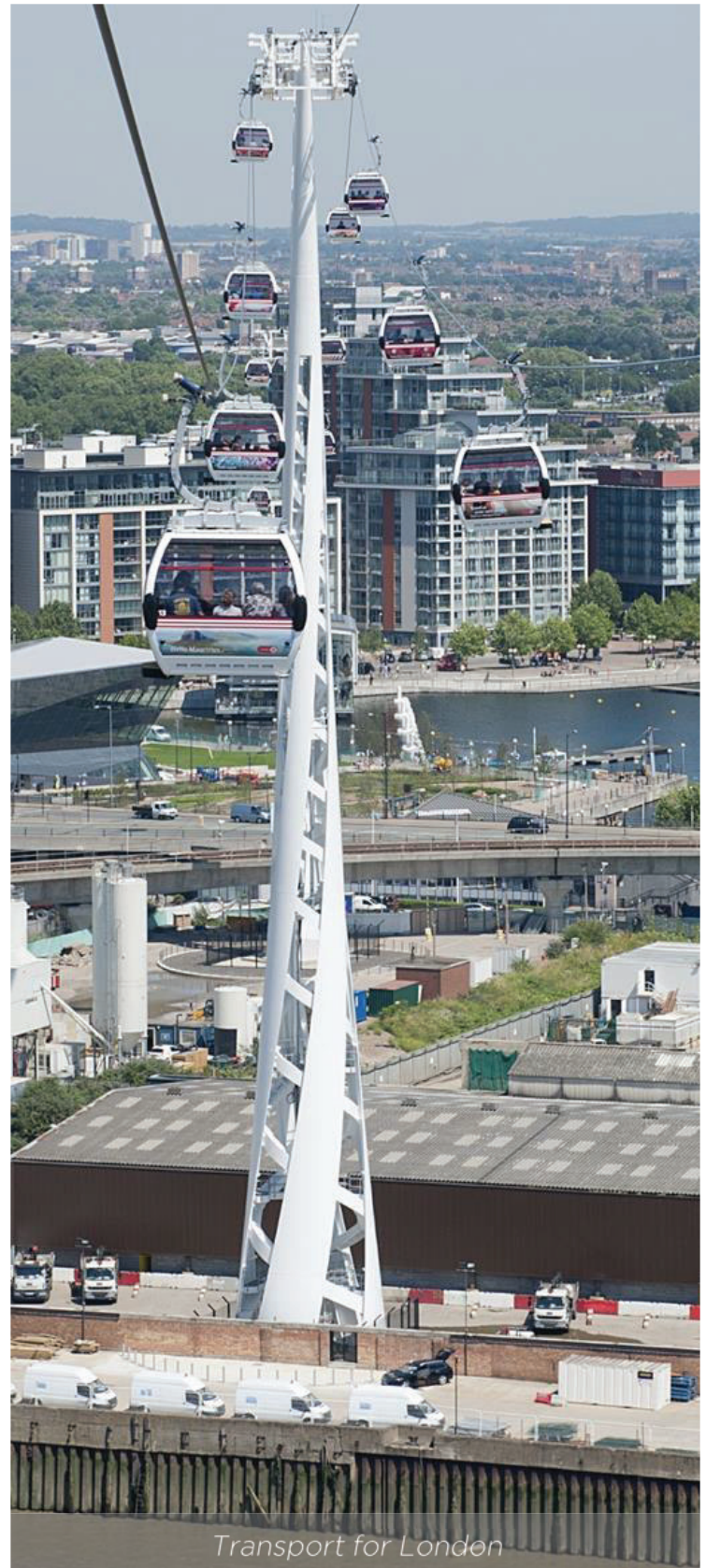


Photo credit: TfL.

# TECHNOLOGY AND METHOD OF APPROACH

INNOVATION AND FEASIBILITY

## **A ride from Union Station to Dodger Stadium would be short and enjoyable, lasting about five minutes.**

The short distance required for the ART system from Union Station to Dodger Stadium will provide a quick ride with quiet operations and a limited footprint to minimize any environmental impacts. Furthermore, the opportunity for an enjoyable beginning to a recreational experience will encourage public transit ridership.

## **An aerial gondola system is a highly suitable solution to connect Dodger Stadium to Union Station.**

Given the elevation change between Dodger Stadium and points below, ART is an excellent means to provide rapid transit to this location. The land uses, both existing and proposed, between Union Station and Dodger Stadium are of a height and density such that an appropriate route can be selected without interference with ongoing and proposed property uses. ART's flexibility of design will permit the Project team, with Metro's leadership and support, to select a preferred route after conducting public outreach and detailed environmental review analysis.

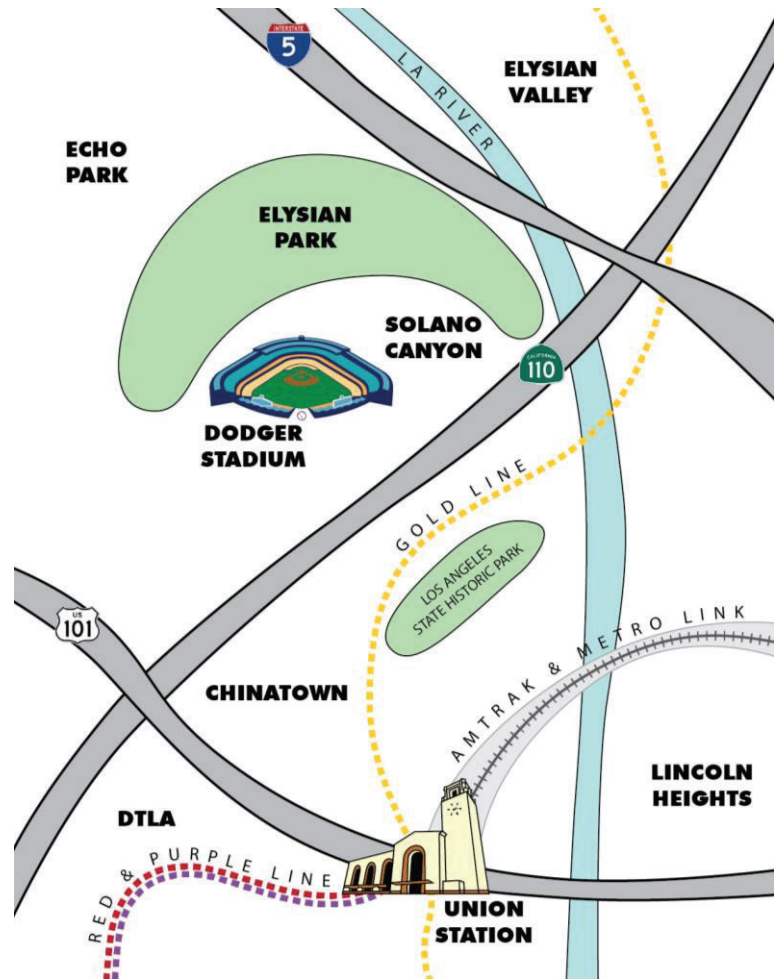
## **As an event venue, Dodger Stadium creates intense peaks of activity, which ART is well suited to accommodate.**

Capacity can be quickly increased or decreased to meet demand associated with games and events at the stadium, while meeting maintenance and operational efficiency needs. Land will be provided on the Dodger Stadium property for the Dodger ART station.

## **Several sites at Union Station, previously identified by Metro as suitable for joint development uses, are potential locations to be utilized for the ART station at Union Station.**

During the Project review phase, the preferred location can be identified after Metro's analysis is complete, ensuring convenient transportation access for Metro patrons between various forms of arrival at Union Station and the ART system.

## **PROJECT CONTEXT**



# TECHNOLOGY AND METHOD OF APPROACH

## BACKGROUND

**Though Dodger Stadium is one of the region's most visited venues, the Metro system does not include any existing or proposed permanent transit connections to the Stadium.** As other venues such as Staples Center and the Los Angeles Memorial Coliseum are now conveniently accessed by transit, and Metro has approved a direct connection to LAX, the importance of providing a permanent transit connection to Dodger Stadium has become ever more clear. With the aerial gondola system's ability to overcome grade and elevation issues, while providing safe, environmentally-friendly, and high-capacity transit connectivity, it has emerged as the best approach to link the Dodger Stadium site to the region's rapidly growing regional transit system.



Photo credit: Jon SooHoo, LA Dodgers.

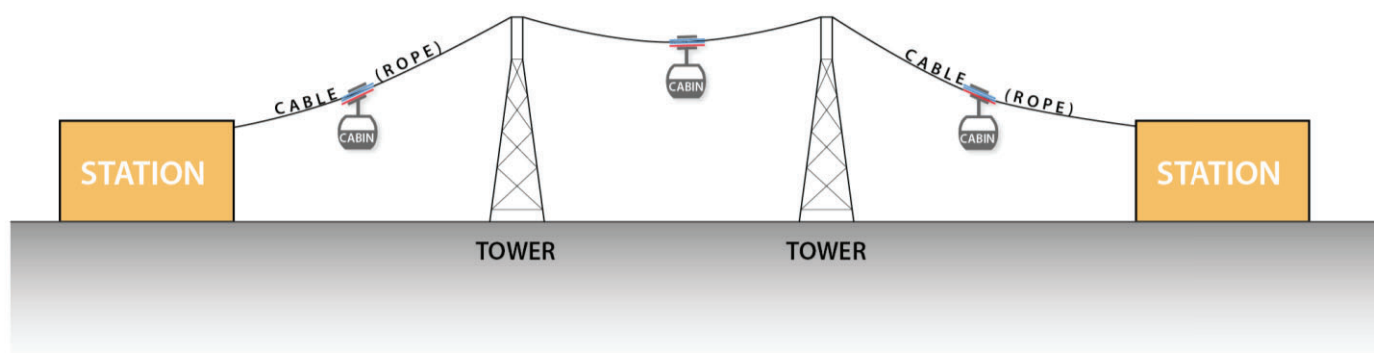
# TECHNOLOGY AND METHOD OF APPROACH

## AERIAL SYSTEM

**Aerial gondola systems, and the preferred “3S” technology for this Project, are comprised of the following elements:**

- **Cables:** Aerial tricable (3S) systems use three steel cables to support and move the cabins. Two stationary cables, called track ropes, similar to cables found in suspension bridges, provide support for the running wheels of the cabins. The third cable circulates continuously around the system as driven by motors and sheaves located in the stations and provides the motive force for cabins which grab on to or release from this moving cable (haul rope).
- **Cabins:** Typical 3S cabins carry between 30 and 40 passengers each. The cabins can include 20 or more seats, are all designed for ADA-accessibility, and can be fully enclosed by walls with large transparent areas for passenger comfort. The cabins are equipped with detachable grips which operate with the circulating haul rope in the stations. Passengers enter and exit through large sliding doors which are closed except while in the loading and unloading areas of the stations.
- **Stations:** The system would include two or more stations, depending on the selected alignment, and would provide ADA access at all passenger stations. While the Project’s cost estimates are based on a direct route, if an intermediate station or future extension is desired for exploration, and additional funding is available, the ART system could provide additional points of access. Stations would include ticketing and queuing facilities, mechanical equipment, and amenities. One station would include cabin storage and maintenance facilities.
- **Towers:** Three to four towers will be required and will be built to the most up to-date seismic and structural standards.

### ***AERIAL SYSTEM COMPONENTS***



# TECHNOLOGY AND METHOD OF APPROACH

## PRECEDENTS

Several high performing aerial transit systems already exist and demonstrate the potential of ART. These include:

### Portland, Oregon

Opened in 2006, the system connects the South Waterfront district with the Oregon Health & Science University campus located in Marquam Hill, an elevated neighborhood with similar access constraints as Dodger Stadium. This is a reversible tramway system designed to serve lower peak ridership demand with a capacity of 1,000 people per hour each way and an annual ridership of 1.5 million.

### London

Built for the 2012 London Olympic Games, part of the Transport for London network and sponsored by Emirates Airlines, this gondola system is 0.6 miles long and connects previously isolated transit terminals across the River Thames, including the O2 entertainment arena. The system is a monocable gondola, serving lower peak demand, with a system capacity of 2,500 people per hour each way. The annual ridership is 1.5 million.

### New York

Upgraded in 2010 and initially opened in 1976, the Roosevelt Island Aerial Tram was the world's first aerial system in an urban context developed to meet a mass transit need. The aerial tram system capacity is 1,500 people per hour each way and handles roughly 2.7 million passengers each year, serving residents, commuters, and tourists.



Photo credit from top: Willamette Week, TfL, CC flickr user Moody Man.

# TECHNOLOGY AND METHOD OF APPROACH

## PRECEDENTS

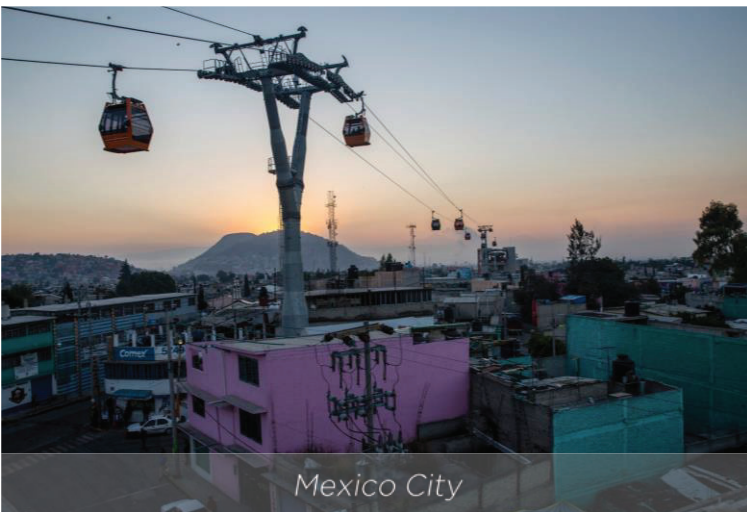


### **Koblenz, Germany**

The Koblenz Cable Car is a tricable gondola system inaugurated in 2010. The system traverses the Rhine River in western Germany, transporting passengers from the riverside banks of Koblenz to a hillside overlooking the city. In the first six months of operation, the system transported 3.5 million people and carried over 50,000 passengers during peak days.

### **Mexico City**

In 2016, the Mexicable opened as Mexico City's first commuter cable car to connect hillside neighborhoods with the city's urban core and the larger public transportation system. The monocable gondola system is 3 miles long with seven stops, and has a system capacity of 3,000 people per hour each way, accommodating a daily ridership of around 29,000 passengers and carrying 5.5 million people a year.



### **South America**

Line K (opened 2006) and Line J (opened 2008) are two monocable gondola systems in Medellín, Colombia, that provide critical service connecting informal settlements located above the city on steep terrain to Medellín's highly-utilized rail and bus system. Due to the popularity of these lines, Medellín has since opened Line L (2010) and Line H (2016). Line K carries 12 million people a year.

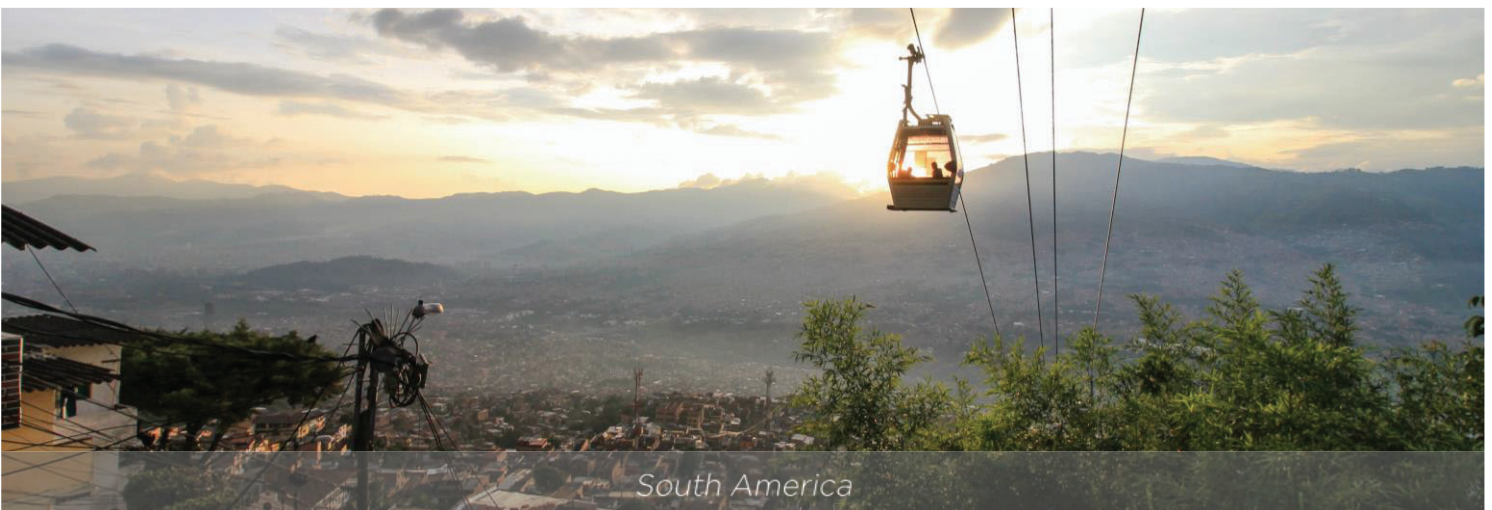


Photo credit from top: CC flickr user CUP-Projects, New York Times, Shutterstock.

## ANTICIPATED RESULTS AND SUPPORT OF METRO'S MISSION



Photo credit: David Wilson.

The Project can provide a range of important benefits to users and non-users alike.

**Mobility and Accessibility:** With the ART system based at the hub of the region's rapid transportation system, transit riders from all over Southern California can have one-stop access to Dodgers games, other events, and Elysian Park via regional and commuter rail, light rail, bus, shuttle and pedestrian connections at Union Station. ART's unique design provides consistent capacity during peak periods, is reliable and is ADA compliant and accessible.

**Environmental:** ART can shift travel mode share away from cars and toward public transit, reducing congestion and emissions. Initial estimates are that ART ridership would reduce vehicle miles traveled to and from Dodger regular season games by almost 10 million miles per season. Furthermore, ART is a

zero-emission transit system. Reducing vehicles queuing on Interstate 5, US Route 101 and State Route 110, Sunset Boulevard and local roads, while replacing those trips with ART's sustainable operating system, could substantially reduce existing impacts on nearby residents.

**Community:** The Proposer is committed to a project that benefits the neighbors of Dodger Stadium and Dodger fans across greater Los Angeles. This Project would not only expand mobility connectivity, but would also be a pleasing addition to the community, with stations and aerial gondolas designed for aesthetic compatibility. The Los Angeles Dodgers have committed to working closely with the Project as transportation for Dodger fans to games at Dodger Stadium and other events.

# ANTICIPATED RESULTS AND SUPPORT OF METRO'S MISSION

**Metro System:** Metro is leading the transformation of Southern California from a car dominated society toward a dynamic, sustainable transit-oriented region, and has demonstrated support by Los Angeles County residents. The ART system is well-aligned with Metro's objectives to provide more mobility choices for Los Angeles County residents. As an enjoyable experience for visitors, we believe the ART system can also draw new tourists to and through Union Station, demonstrating the region's commitment to equitable transportation investment to the world.

In addition to Union Station's linkages to 141 miles of subway, light rail and bus rapid transit, it is the hub of Metrolink's commuter train lines; all of these systems are used by Dodger fans. Metro staff are actively working on a range of improvements to the passenger experience at Los Angeles Union Station, including multimodal transit connectivity, public realm improvements, and potential public-private funding mechanisms. By 2022, when the ART system will be fully operational, both the Crenshaw/LAX Line and the Regional Connector will be completed, dramatically growing the importance of Union Station as the system will allow for a continuous trip across the County both north-south and east-west with no transfers. Metro anticipates that these system expansions will result in a

significant jump in ridership, as travel by transit will be faster and more convenient.

When ART is added to Metro's other system expansions, we anticipate increased transit utilization to Dodger Stadium, with more fans arriving at Union Station by transit and then connecting to the Stadium via the ART system. Many Dodger fans will learn more about Metro and could become regular riders, which would increase the likelihood they will use the Metro system for other trips. A recent UCLA-SCAG study has stressed the importance of potential increases in "choice ridership," where people who have access to other means of transportation will choose to ride public transit, perhaps once or twice each month. The ease of attending games, events, and recreation through ART will encourage thousands of new choice rider trips per year and can catalyze more regular ridership.

As the Metro system continues to grow with extensions of the Purple Line, Gold Line, and development of the West Santa Ana Branch, Union Station will be even more convenient for Dodger fans to visit the Stadium via rapid transit and the ART system, supporting increased growth for Metro's overall system ridership into the future.





The Proposer commits to obtain third party financing for the capital construction cost of the proposed Project, which will be designed to be privately operated and maintained. We seek Metro's assistance in three areas: location of the ART station at Union Station, act as lead agency for environmental clearance, and assist with matters related to land and aerial easements as needed. The Project seeks to fully reimburse Metro for the costs of the Metro staff time for the above work.

- **Provision of location at Union Station for ART station siting:** An ART station on Union Station property would provide seamless connections for commuters transferring from regional rail, bus or local transit. Metro recently identified a number of sites at Union Station as potentially eligible for joint development and several of these would be suitable for an ART station. The Project Team will work with Metro staff to assess potential sites and to take into account any long-range plans for the Union Station property.
- **Responsibility as lead agency for the California Environmental Quality Act (CEQA) process:** While we are proposing that Metro act as the lead agency for CEQA, full support would be provided by the Project Team in the CEQA process. We will initially develop a schedule of deliverables jointly with Metro and ensure that qualified consultants provide all necessary technical drafts to the appointed Metro staff for their review. The Proposer will deposit with Metro the funding determined reasonably necessary by Metro to assure sufficient resources are available for Metro's independent review, including for Metro staff time.

- **Assistance with acquisition of aerial easements as well as land acquisition for towers and other facilities:** The Proposer is fully committed to paying fair market value for private aerial easements and rights of way and land required to deliver this Project. Metro's support in this process, with staff time and costs reimbursed by the Project, is also requested to assure timely Project implementation.

The Project Team is well aware of the many projects and programs that Metro has committed to deliver to County residents, and we know that adding another endeavor will require additional resources for Metro. Accordingly, this Project seeks to provide as much efficiency as possible to Metro staff while assuring the resources are available for their independent review to ensure the best possible solutions for Metro approval. Consistent with Metro's goals for its Office of Extraordinary Innovation, we look forward to working together so this investment is an innovative, sustainable, zero-emission transit solution for Dodger Stadium, one that will also support the improvement of mobility throughout the region.

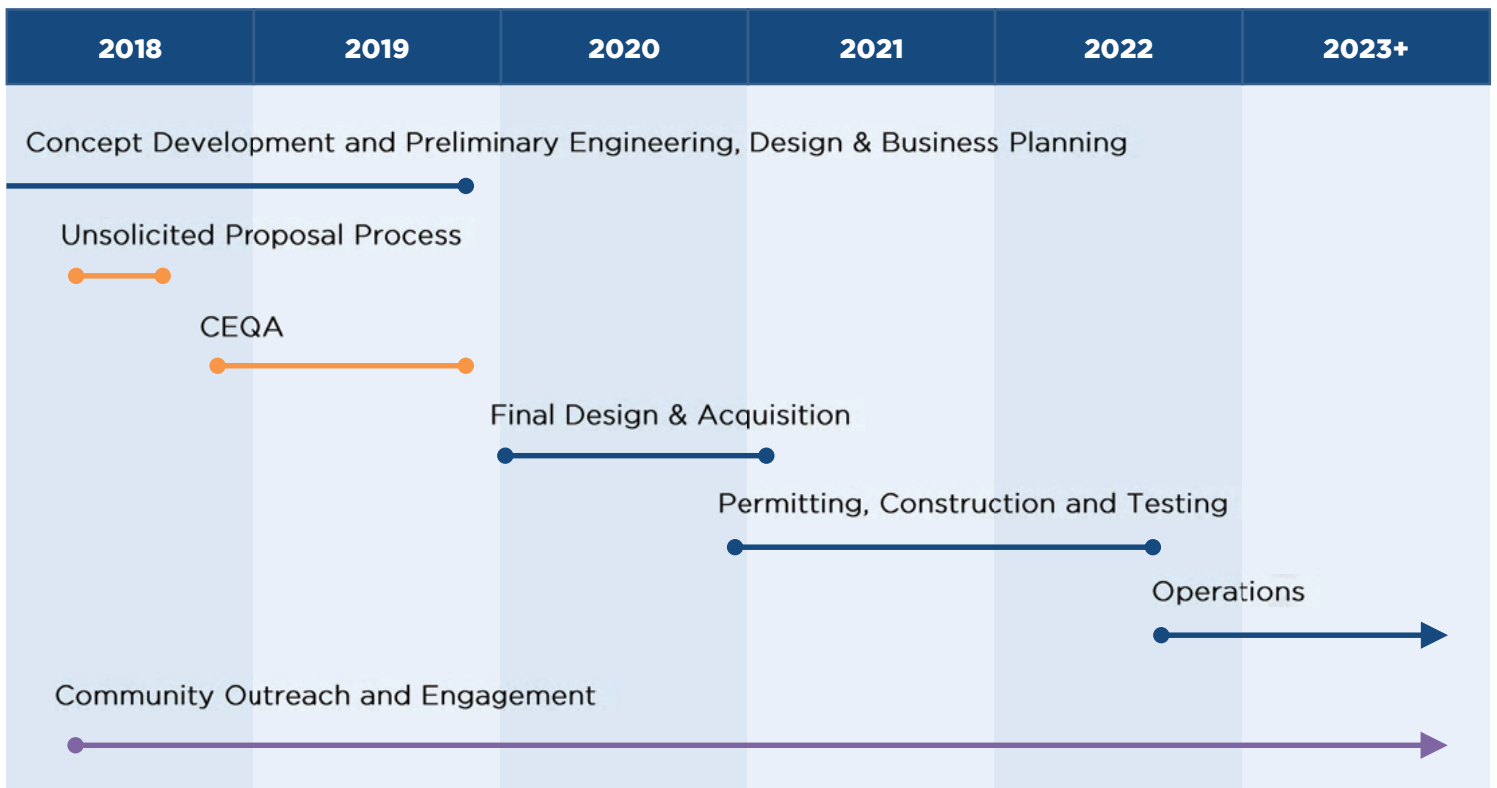
# PROJECT IMPLEMENTATION

## PROJECT TIMELINE AND PROPOSER OVERVIEW

**The Project Team is committed to delivering the Project on an ambitious schedule**, with Project completion, testing and operation anticipated in the next several years. This Project, which will support a range of benefits as previously described, will also be delivered well in advance of the 2028 Olympic and Paralympic Games, contributing to the spirit of Los Angeles Mayor Eric Garcetti’s aspirational “Twenty-eight by ‘28” initiative to deliver transformative projects before the 2028 Games. An illustrative project schedule is shown below.

**The Proposer commits to obtain third party private financing for the capital construction cost of the Project as proposed, as well as to privately operate and maintain the ART system.** As noted above, this commitment is based on the direct route with two stations, but we would be happy to coordinate on potential additional points of access if other sources of funding are available. The Proposer is deeply committed to this innovative project and fully capable of meeting all funding commitments.

### PRELIMINARY PROJECT TIMELINE



The Project Director of Aerial Rapid Transit Technologies LLC (ARTT) is **Martha Welborne**, the former Chief Planning Officer of Metro, who led Metro's long-range transportation program in Los Angeles County, and initiated the design and delivery of 12 new transit corridors approved by County voters. She has a track record of delivering ambitious, public-serving projects, including as Managing Director of the Grand Avenue Committee, and in her work to initiate what became Metro's rapid bus transit system.

ARTT is supported by a team of highly-qualified consultants with the expertise necessary to implement the project. The team consists of:

**Engineering Specialties Group** provides engineering and consulting services for the transportation and ropeway transit industries. ESG professionals have provided these services for countless clients and installations across the resort and urban environments for over 40 years, including for the Angels Flight funicular. Staff remain on the forefront of the adoption of ropeways into the urban environment and sit on the national standards committee for passenger ropeways (ANSI B77).

**pointC, LLC** — and its predecessor entity Planning Company Associates — has provided strategic mobility services to both public and private clients for the past 32 years. Led by David Grannis & Tony Harris, pointC specializes in innovative mobility strategies, transportation funding and economical and efficient project delivery. pointC has been involved in numerous mobility/transportation projects of regional significance; examples include the funding/financing of the Alameda Corridor, the structure and delivery of the Los Angeles to Pasadena Gold Line, funding for the coastal portion of the Hearst Ranch Conservation agreement, and strategic advisory services to Metro as part of the Union Station Master Plan, to name only a few.

**HR&A Advisors, Inc.**, is a real estate and economic development consulting firm providing strategic advisory services to transit agencies related to business planning, economics, public-private partnerships, and transit-oriented development. HR&A has worked with Metro on a number of transformative projects. HR&A also has experience developing implementation strategies for other aerial transit systems in the United States, notably the New York City Sky Line, a proposal to bring a gondola system from Lower Manhattan to Governor's Island and Red Hook in Brooklyn.

**Johnson Fain** has established itself as an architecture, planning and interior design firm known for its creative approach to the built environment over the past 28 years of professional experience in the United States and overseas. Johnson Fain has completed over forty transit related and transit oriented community projects. All have been extremely successful and have added important elements and improvements to mobility and the urban fabric. A few of these projects include the LA Metro System-wide Station Design, the Culver City TOD Visioning Study, the Fullerton Transportation Center and Blossom Plaza at the Chinatown Gold Line Station.

**Ramboll** is a leading international engineering, design, and management consultancy. Headquartered in Copenhagen and privately owned, Ramboll has more than 13,000 employees across 300 offices in 35 countries. The Ramboll Environment and Health (REH) group has a network of more than 2,100 environment, health, and water employees globally. REH is among the world's leading environmental and health consultancies, trusted by clients to understand and manage the impacts of their activities and products so that they can respond to business, regulatory, or legal challenges effectively and develop sound strategies for operating sustainably.

**Fehr & Peers** has specialized in providing transportation planning and engineering services to public and private sector clients since 1985. The firm develops creative, cost effective, and results-oriented solutions to planning and design problems associated with all modes of transportation. Fehr & Peers takes a creative, data-driven approach to each of its practice areas: travel behavior and forecasting, multimodal operations and simulation, transit planning, bicycle and pedestrian planning, sustainable transportation, freight systems and airports, integrated land use and transportation plans, conceptual street and trail design, and transportation engineering and ITS design.

**Nabih Youssef & Associates, Structural Engineers** (NYA) is an internationally recognized structural engineering firm providing specialized structural and earthquake engineering consulting for new and existing buildings. Established in 1989, the firm's design practice is geared towards architecturally complex building projects, including educational, residential/housing, restaurants, commercial, and public projects. NYA currently has over 40 practicing engineers and is based in Los Angeles with additional offices located in San Francisco and Irvine.

# **EXHIBIT D**



# **LOS ANGELES AERIAL RAPID TRANSIT**

**RESPONSE TO METRO REQUEST FOR INFORMATION**

SEPTEMBER 2018

# AERIAL RAPID TRANSIT TECHNOLOGIES LLC

700 S. Flower Street, Suite 2995  
Los Angeles, CA 90017  
310.751.3480 | [www.aerialrapidtransit.la](http://www.aerialrapidtransit.la)

September 26, 2018

Dr. Joshua L. Schank  
Chief Innovation Officer  
Office of Extraordinary Innovation  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

Re: Aerial Rapid Transit System from Union Station to the Dodger Stadium Property:  
ARTT LLC's Response to Metro's Request for Information

Dear Dr. Schank:

We are very pleased to submit, on behalf of Aerial Rapid Transit Technologies LLC, this response to Metro's Request for Information concerning the Los Angeles Aerial Rapid Transit system to connect Los Angeles Union Station with the Dodger Stadium property. As stated in our Unsolicited Proposal Phase I submission, ARTT LLC will finance, design, build, operate, and maintain this Project. While not requesting funding from Metro, we believe cooperation is essential and will result in tremendous positives for the public including environmental progress toward meeting clean air goals. ARTT LLC is willing to reimburse Metro's staff costs to assist in the Project's review process, and we look forward to working with you to transform this vision into reality as soon as possible.

The ART connection to Union Station will provide direct benefits to Metro, its passengers, and community stakeholders. The ART will increase transit ridership including for "choice" riders through direct access from Union Station with convenient connections to the Metro system and Metrolink trains at the region's transportation hub. For passengers, the Project will introduce a new, high quality, quick and exciting rapid transportation experience, with a travel time of about 5 minutes from Union Station to Dodger Stadium. For neighbors, the Project will be a community benefit as it will reduce the event-related traffic on the roads in and around Dodger Stadium property and surrounding areas, improving air quality, reducing noise, and increasing safety. The Project is also consistent with Metro's Core Business Goals including to:

- Promote extraordinary innovation;
- Exercise fiscal discipline to ensure financial stability;
- Improve the customer experience and expand access to transportation choices;  
and
- Increase transit use and ridership.

ARTT LLC is anxious to advance this Project expeditiously and is eager to work with Metro as a willing partner to demonstrate that innovative, clean energy, sustainable, privately funded transportation can be made available to Los Angeles in harmony with publicly funded infrastructure. Since our Phase I submission on April 25, 2018, we have been eager to proceed and hereby provide a complete response to your August 2018 Request for Information ("RFI"),

together with proposed next steps for working together. An agreement with Metro for immediate implementation is important to assure that Metro and ARTT LLC are aligned in the objective of delivering this outstanding Project as soon as possible. We respectfully request that Metro work with us to achieve agreement on next steps for proceeding by the end of October 2018.

We are encouraged that Metro's RFI stated that "The Review Team expressed unanimous interest in gathering more information about this proposal," and believe we can form an innovative, mobility partnership that will meet the goals of Metro and ARTT LLC and provide Dodger fans with a permanent rapid transit link at the earliest feasible date. We look forward to moving forward with Metro.

Sincerely,

A handwritten signature in black ink, reading "Martha Welborne". The signature is written in a cursive, flowing style.

Martha Welborne, Project Director  
Aerial Rapid Transit Technologies LLC



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Draft Term Sheet for an Exclusive Negotiation Agreement	



**Metro**

Los Angeles County  
Metropolitan Transportation Authority

One Gateway Plaza  
Los Angeles, CA 90012-2952

213.922.2000 Tel  
metro.net

**This Request for Additional Detailed Information, its Attachments, and any response to it are Strictly Confidential.**

Unsolicited Proposal – Phase II Detailed Review: Response to Request for Information

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## **PROJECT INFORMATION**

*To be completed by Metro Staff*

**Project Name:** Los Angeles Aerial Rapid Transit (LAART) Project ID: UP-2018-14

**Date Submitted:** 25 April 2018

**Date Received:** 25 April 2018

**Phase I Response Date:** 11 June 2018 Phase II RFI issuance: 10 August 2018

**Requested Response Date:** 12 November 2018 Review Team:

- Program Management
- Countywide Planning
- Operations
- Vendor/Contract Management
- Office of Civil Rights
- Office of Extraordinary Innovation

**Response Date:** 26 September 2018

## **SUMMARY OF PHASE I PROJECT EVALUATION**

The Review Team expressed unanimous interest in gathering more information about this proposal and expressed openness to the three main areas of Metro involvement laid out in the Phase I proposal (location at Los Angeles Union Station (LAUS), responsibility as lead environmental agency, and assistance with aerial easements and land acquisitions) (p. 14).

**RESPONSE:** Thank you for the opportunity to provide more detail regarding the proposed Los Angeles Aerial Rapid Transit system (“ART” or “the Project”). Aerial Rapid Transit Technologies LLC proposed a unique, innovative partnership with Metro in its Phase I Unsolicited Proposal submitted on April 25, 2018, to fund/finance, design, construct, operate, and maintain the Project at no cost to Metro. Recognizing that Metro’s ability to implement expansions to the region’s transit system is usually limited by the availability of public funding, we believe that this Project presents Metro with an unusual opportunity to demonstrate the feasibility of a self-funded innovative transit partnership that provides significant public benefits. We appreciate Metro’s openness to assisting in three areas as detailed below and hope we can proceed as soon as possible to enter into necessary and appropriate agreements with Metro to move forward together.

The discussion then focused on the costs, impacts and benefits of this project, and what role Metro would play should the proposal advance to implementation, as it influences what information to request.

#### The costs, benefits and impacts of this project

The review team had some concerns whether this project would deliver noteworthy benefits to local and/or regional mobility, air quality and congestion compared to other potential investments (p. 12). However, the review team discussed other benefits, such as the significant investment being made by the developer, and the intangible benefits of this project as a fun and iconic local attraction that captures the public imagination and instills a sense of civic pride.

This project has the potential to create positive net benefits for the people of Los Angeles County. For its involvement and whenever possible, Metro must work to prevent any potentially negative impacts to the people of Los Angeles County and deliver value to the people of Los Angeles County. This includes maximizing the return on investment of the taxpayers who invest in Metro’s mission.

There are aspects of this project and the role Metro is being asked to play that will have a cost to Metro and the people of Los Angeles County. These may include the social and political costs of acquiring property; the impacts of construction on local communities; acting as the face of the project and mediating opposition; the opportunity costs of expending limited resources and capacity; and the impact of allowing for an additional transit use on the Union Station property given the myriad of projects, both transit and commercial, in early stages of development. To the extent that Metro will be environmentally clearing the project, claiming property, and substantially involved in other ways, the reputational risks of problems that arise on the project such as delays, mismanagement, or operational incidents, also reflect Metro even if Metro is not paying for the project.

While the risks of this project to Metro and the people of Los Angeles County are lower than most of Metro’s planned capital projects, every project has risks that must be explored to ensure that the benefits of the project outweigh those risks. The review team saw great advantages to this investment in the connection between two iconic Los Angeles destinations, but because of the risks, Metro is interested in understanding how risks can be minimized and value can be maximized.

#### The role Metro would play

The review team felt that it would be advantageous to simplify Metro’s role as much as possible, and to focus this Request for Additional Detailed Information (RFI) on understanding the Project assumptions (ridership, site needs, and similar) to inform the environmental process; the business case for Metro; the role Metro would play; the long-term vision for the project; and the project’s interface with Los Angeles Union Station.

Because this project is unprecedented, Metro must answer interrelated questions surrounding how the project would be structured, what Metro policies and procedures would apply, what contractual vehicle would be used, which entities will be involved and in what ways, etc. As Metro collects additional information on this project, it will continue to refine its position on many of these key questions. This RFI invites the proposer to weigh in on these questions as well, and feels that the earlier the answers can be understood and agreed upon, the better.

**RESPONSE:** We agree wholeheartedly that the earlier the better to resolve these key questions and, in particular, the ARTT LLC team is eager to commence face-to-face discussions with Metro staff to work through these items. During the months that have passed since submittal of our Unsolicited Proposal, the team has completed significant additional work to facilitate the Project and regrets the inability to communicate directly with staff due to the “blackout period” that has continued because a sole source determination has not been made.

Moreover, since ARTT LLC has expended very significant funds, a prompt decision on the sole source issue is important to inform its continued investment decisions. As set forth in our Phase I Unsolicited Proposal, ARTT LLC has a unique ability to provide the Project, including essential proprietary information.

- ARTT LLC has a unique ability to deliver the Project, including the necessary station location at the Dodger Stadium property and proprietary information that is required. The Unsolicited Proposal Policy explains that if an unsolicited proposal offers a proprietary concept that is essential to contract performance, it will be deemed “sole source.” The ability to provide land where a proposed ART station would be located at the Dodger Stadium property, and to obtain private financing for the Project, is integral to the success and viability of this proposal.
- Proprietary information is essential to contract performance and qualifies the ART for a sole source award. Proprietary information essential to accomplishing the Project includes, but is not limited to: information to support travel planning for Dodger employees and game attendees, rideshare usage information, and parking lot usage information; and ability to develop and implement necessary coordination with the Dodger ticketing system and strategies to coordinate with ART ticketing for Stadium events.
- Competitive solicitation should not be required before agreements are entered into between Metro and ARTT LLC. The Unsolicited Proposal Policy indicates that Metro must undergo the competitive solicitation process only before entering into a competitive procurement contract. Metro’s ordinance governing contractor prequalification makes clear that it does not apply to contracts where there is only one source for the necessary services. (See Section 4-05-070 G.) Here, public funds are not being requested, and the contractor prequalification ordinance only applies to contracts with over \$100,000 to be expended by Metro. (See Section 4-05-030 C.) In addition, the ordinance governing contractor prequalification does not apply to real estate lease agreements, such as an agreement if ARTT LLC leases Metro property for an ART station. (See Section 4-05-070 F.)

### The role of this RFI

This RFI requests a substantial amount of supplemental information, and in doing so, makes some assumptions. The reason for asking for such information is to receive the most complete Phase II proposal possible. The more defined the project at the end of Phase II, the more confidently Metro can make its decision to implement the project, and in what manner.

Most of the information requested in Section 3 of this RFI is requested for the following reasons:

To move forward with providing a location at LAUS, Metro needs to understand where the station will go and the potential impacts to projects, parking, and facility use.

To move the project smoothly through the environmental process, Metro needs project details and to understand which policies the proposer believes apply.

To approve the project, Metro needs to ensure the project will be insured and constructed to applicable codes and specifications, and that the proposer has a sound funding plan and business model.

To move from Phase II to implementation, Metro prefers to have as much project definition as is practicable.

If information requested will not be known or available in Phase II, the proposer should explain its reasoning as well as at what point during the process the information would become available.

## **Purpose of this Document**

The purpose of this Request for Information (RFI) is to gain greater understanding of your firm's Unsolicited Proposal and enable Metro to conduct a Phase II Detailed Review of your proposal. It also allows Metro to communicate key needs, challenges, opportunities, and aspirations in a way that should allow you to reiterate your proposal to more adequately fit these parameters.

This RFI will serve as a tool to gather more information about the conceptual proposal to aid Metro's Review Team in making a Phase II determination. The RFI is drafted based on the feasibility assessment previously conducted and approved for the project during the Phase I Review. The information you provide to respond to this request should help Metro to understand the business case for implementation of your proposal.

If Metro ultimately chooses to advance your Proposal, and to issue procurement documents, the information provided in response to this RFI will strengthen the procurement document (whether RFP or sole source). Any information received in response to this RFI may assist Metro's Unsolicited Proposal Review Team, Office of Extraordinary Innovation, and Office of Vendor/Contract Management in finalizing the scope of work and requirements which may be used at a future date in the issuance of a Request for Proposals (RFP), or other contracting mechanism. Submitting a response to this RFI is not a guarantee in any way that a supplier will be selected for any subsequent RFP or contracting mechanism, nor does it preclude any supplier from responding to future procurement opportunities.

The issuance of this RFI does not constitute a commitment to issue a request for bids/proposals, award a contract, or pay any costs incurred in preparation of a response to this RFI. Cost and price information provided in proposals will be held in confidence and will not be revealed or discussed with competitors, except to the extent required by law.

## PART I: PROBLEM STATEMENT AND KEY REQUIREMENTS

*To Be Completed by Metro Staff*

### I. Problem Statement

*Describe the gap/problem(s), its magnitude (i.e., which mission/functional areas, people, organizations, processes, etc. are affected) and the primary mission or business impacts if not corrected.*

Sports venues draw large crowds that overwhelm transportation systems before and after events. Because Dodger Stadium is the largest Major League Baseball stadium (capacity 56,000), is located on a hill in Chavez Ravine, is adjacent to several bustling neighborhoods, and sits within traffic congested Los Angeles, traffic getting to and from Dodger Stadium is notoriously challenging. Dodger Stadium draws regional crowds, the vast majority of whom drive their personal vehicles to access the venue.

These vehicles converge and bottleneck on the surface streets leading up the Stadium, especially Sunset Boulevard/Cesar Chavez from Union Station and into the communities West of Echo Park. This traffic is exacerbated by a lack of high-quality transit options which could more efficiently shepherd people in and out.

As part of the Phase II response, Metro would benefit from hearing more about how the proposer defines the problem statement and solution.

**RESPONSE:** We agree with Metro's summary above of the current conditions that exist in terms of congestion resulting from personal vehicles as the primary means of access to Dodger Stadium, which with 56,000 seats and approximately 100 baseball games and other events each year continues to set records for annual attendance. In addition to improving the congestion that impacts local streets, the creation of the ART presents the opportunity to reduce air quality impacts resulting from such vehicular traffic. Moreover, congestion occurs on the freeways around Downtown including the I 10 Freeway, which impacts commuters and other travelers. If not improved through implementation of the ART system, as the region's population growth and resulting travel needs continue to increase over time, this local and regional roadway system is likely to experience greater congestion.

In terms of the solution, our proposal presents the potential for "triple bottom-line" benefits to reducing congestion around Dodger Stadium: the Project provides economic, environmental, and social equity benefits, consistent with Metro's mission of bringing mobility choice to all parts of Los Angeles County.

As to economics, ARTT LLC is committed to fully fund/finance ART. As Metro continues to expand the transit system throughout the region, there are no existing or proposed plans for providing permanent transit connections to Dodger Stadium. Metro's capacity to expand access is constrained by funding commitments. ARTT LLC's commitment provides an economic upside to Metro as the Project will be completed at no cost to Metro and both fulfills Metro's purpose/mission and provides Metro with economic benefits in the form of new "choice riders" who will gain exposure to the Metro system through a high-quality experience connecting to Dodger Stadium. As a UCLA study earlier this year concluded, attracting such ridership even several times per month offers tremendous benefits to Metro and the region.

Second, there is an environmental cost to the current access system. It is felt by residents and businesses in and around this immediate geography, as well as by the fans trying to get to and from an

event. Traffic congestion, air pollution from vehicles, noise, and safety concerns with the number of cars in neighborhoods all contribute to environmental impact.

Third, the surrounding communities are neighborhoods that are already environmentally impacted as detailed in the metrics of CalEnviroScreen 3.0 (Office of Environmental Health Hazard Assessment). These neighborhoods are in close proximity to major freeways, the SR-110 and the US-101, as well as heavily congested arterials (Sunset Boulevard) that create both safety and air quality issues.

ART contributes to Metro's mission of providing transportation services – indeed, economical and environmentally compatible mobility *choices* – and provides an excellent return on taxpayer investment for Metro as there are no Metro funds being requested or required for any aspect of the implementation, operation, and maintenance of ART service. ARTT LLC envisions that a round trip ride on ART will cost less than the average parking costs at the stadium. Together with expected ridership from other visitors including tourism on non-game days, farebox revenue can finance the Project while reducing the cost of transportation in comparison to private vehicles. This is a further incentive to drivers to choose “transit first.”

ART is environmentally friendly. With a carrying capacity of at least 5,000 people per hour per direction (much higher than that of buses), ART can change environmental outcomes by providing a much higher capacity and quality transport experience – and one that is an attraction in and of itself – for Metro riders. In the two-hour timeframe before a Dodger game, ART can carry more than 10,000 people; based on current average vehicle ridership to Dodger Stadium, this will eliminate roughly 3,200 cars from local and regional roads (or 6,400 trips per game or event). These mode-shift benefits are accentuated by the fact that ART is an all-electric transportation mode, which replaces automobiles, most of which use carbon fuels.

ART opens up access and mobility to this major event venue for the whole region, while providing a localized investment that brings equitable benefits to the neighborhoods surrounding the Dodger Stadium property. Given the wonderful renaissance an “accessible Los Angeles” is undertaking with Metro's transit expansion, Angelenos and Southern Californians from all corners of our region can experience “getting there” to a Dodger game in style via Metro and ART. Given that Staples, the Coliseum, and other sports venues have viable transit options, it is time for fans heading to Dodger Stadium, which is identified with Los Angeles all over the world, to have 21<sup>st</sup> century mobility choices.

ARTT LLC envisions a more holistic aspect to providing the ART as alternative mobility and access to Dodger Stadium than just being for fans. The Project underscores a triple bottom-line approach to community-building and civic structure in the second largest city in the country.

## **2. Background and Context**

*Provide additional context that explains the current situation (e.g., policy, process, environmental factors). Identify root causes (if known) and contributors to the observed problem(s). Include relevant research and information on industry or market conditions as appropriate. Keep the focus strategic.*

### **Metro's Responsibility**

Because this project is envisioned to be privately designed, built, operated, maintained, funded, insured, and financed, Metro does not envision taking a hands-on, prescriptive, or performance minded approach to this project, instead focusing on the elements of the project for which Metro would be responsible.



Under the structure proposed in Phase I, Metro still needs additional information about each of the above-mentioned aspects of the project to better understand and evaluate it, the case for it, and its impacts, and in order to serve as the agency lead on environmental planning and clearance. Metro also has a significant interest and role to play as the property owner of the LAUS site and a steward of taxpayer investment, which includes better understanding the station location, impact to the immediate site and LAUS facilities, and feedback/approval rights of station designs and operating plans.

For the purposes of this RFI, Metro intends to focus its involvement, and its questions, on the following categories:

1. Metro's mission, financial and business interests, including its role in improving mobility and providing transportation services and return on taxpayer investment for Los Angeles County

**RESPONSE:** As detailed in the response to Part II, Executive Summary, ART is consistent with Metro's goals and objectives, including advancing the following Metro Core Business Goals: promote extraordinary innovation, exercise fiscal discipline to ensure financial stability, improve the customer experience and expand access to transportation choices, and increase transit use and ridership.

2. Metro's role as the lead agency during the environmental review (California Environmental Quality Act) process, for which it will be helpful to have a better understanding of future development plans at Dodger Stadium and/or associated projects; project design and definition; and assumptions and their basis.

**RESPONSE:** As further detailed below, ARTT LLC seeks Metro's assistance in three specific areas: potential location of the ART station at Union Station; to act as Lead Agency for environmental clearance; and to potentially assist with matters related to surface land acquisition and aerial easements, as needed. ARTT LLC shall cover the costs associated with the preparation and certification of any required environmental documents including an EIR under CEQA. ARTT LLC shall arrange and pay for all required CEQA studies and reviews at its sole costs and expense. ARTT LLC is also willing to reimburse Metro for its staff costs.

3. Metro's role in acquiring property for this project, per CPUC's explanation of the "Powers and Functions of District"

**RESPONSE:** ARTT LLC intends to use its best efforts to acquire public right of way and private land and aerial easements. In the event that ARTT LLC needs Metro's assistance in said acquisition, it is anticipated that Metro would utilize the powers provided it by California Public Utilities Code (CPUC) Division 19, "Local Transportation Authorities", Chapter 4, "Powers and Functions". CPUC Section 180152 specifically states:

The authority may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, but not limited to, contracts and stipulations to indemnify and hold harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers granted in this division.

In addition, Division 10, "Transit Districts", Part 3, "Southern California Rapid Transit District", Chapter 5, Powers and Functions of District, Section 30600 states:

The district may take by grant, purchase, gift, devise, or lease, or by condemnation, or otherwise acquire, and hold and enjoy, real and personal property of every kind within or

without the district necessary or incidental to the full or convenient exercise of its powers. That property includes, but is not limited to, property necessary for, incidental to, or convenient for joint development and property physically or functionally related to rapid transit service or facilities. The board may lease, sell, jointly develop, or otherwise dispose of any real or personal property within or without the district when, in its judgment, it is for the best interests of the district so to do.

4. Metro's role in approving this project, per CPUC § 130252

**RESPONSE:** See response to Part I, 5 as to Metro's role in approving the Project pursuant to CPUC Section 130252.

5. Current and future plans for Los Angeles Union Station, impacts, and associated concerns as property owner of this regional hub.

**RESPONSE:** As detailed in Part II, 4, as to property and facilities, ARTT LLC has identified two potential station locations at or near Union Station: Metro's identified "Development Site C" and over Alameda Street near Union Station. If Development Site C is selected, ARTT LLC would seek a ground lease with Metro for the ART. For any station location at or near Union Station, ARTT LLC would coordinate with Metro concerning pedestrian access to the station.

We understand that Metro is currently undergoing final design for the LAUS Forecourt and Esplanade improvements. ARTT LLC will work with Metro to ensure that the ART station located at or near LAUS will be consistent with improvements to the Forecourt and Esplanade.

#### LAUS Spatial Context

*Information about ongoing and planned projects for LAUS are included in Attachment J*

### **3. Functional Requirements**

*Summarize functional requirements. Focus particularly on requirements necessary to achieve desired outcomes and measurable performance objectives.*

#### Planning

- The proposal should describe the impacts of the project to Metro and LAUS throughout the lifecycle of the project
- The project should include a conceptual project plan, as well as a high-level schedule, scope and budget, or an explanation of when this information would become available in relation to environmental clearance and/or negotiations
- The proposal should describe the footprint of the facilities, including how much space would be needed for a station, where the preferred station sites are located, and why. The proposal should show how each station area would influence the alignment alternatives. If the alignment alternatives are well known, the proposer should provide some insight into how many properties and aerial easements may need to be acquired, which properties may need to be acquired or operated above, and for what reason.
- The proposal should describe Aerial Rapid Transit Technologies (ARTT), LLC's preferred approach to the environmental process, including but not limited to alternatives analysis, visual impacts, technical analysis, emergency response, feasibility, impact to parking, etc. This should include an interpretation of whether site/economic development plans that rely on this project

will also need to be environmentally cleared, and if their clearance would occur separately from this project. With this in mind, the proposal should include any information relevant to the environmental process.

**RESPONSE:** We look forward to working with Metro staff to conduct the scoping process consistent with CEQA to determine the issues to be analyzed in the environmental review, and also assess any federal issues and whether a FONSI under NEPA will also be likely to be needed. We agree that route alternatives should be studied. As to the question of site/economic development plans that rely on this Project, the only elements we have identified for analysis are the stations, together with the aerial easement and tower locations. Any impacts at Union Station should be studied as appropriate and similarly, for the station at the Dodger Stadium property, we anticipate the City will require a Plan Approval under the Dodger Stadium Conditional Use Permit as it does for other improvements that serve the existing stadium uses.

- The proposal should explain which Metro policies ARTT believes should not apply to this project, be waived or granted exemption, or would conflict with this project, and why; a worksheet template has been included in Attachment B.

**RESPONSE:** This policy explanation is provided in Part I, 4.

- The proposal should indicate what coordination would be required with other jurisdictions, such as the City of Los Angeles and Caltrans, and who would be responsible for that coordination and its associated outcomes

**RESPONSE:** ARTT LLC will coordinate with the City of Los Angeles regarding any approvals to operate the ART system on and over City streets and rights of way. Additionally, the ART will cross State Route 110 (“SR-110”), which is under the jurisdiction of the State of California Department of Transportation (“Caltrans”). As such, while ARTT LLC will coordinate with Metro as appropriate, we anticipate working directly with Caltrans on any required reviews and approvals for said crossing.

- The proposal should validate its assumptions, whenever possible corroborating assumptions with comparable, existing projects

**RESPONSE:** Information is included in Part II as to relevant experience from other, existing aerial systems.

- The proposal should not assume that Metro’s Dodger Stadium Express would continue to operate when an aerial tram began serving Dodger Stadium (see attachments G and H for more information on the Dodger Stadium Express)

**RESPONSE:** We recognize that it will be Metro’s determination whether to continue operating the Dodger Stadium Express. The Los Angeles Dodgers would welcome the continued operation of both systems. In addition, we note that the current funding for the Dodger Stadium Express comes from air quality related sources and, if the ART replaces that system, should be considered as funding sources for Metro’s Union Station-related operating costs for the ART.

- The proposal should assume that if the project were to proceed on the LAUS property, Metro would be involved in community engagement, outreach, and construction relations and mitigations, and should explain ARTT, LLC’s approach to community outreach, including what, if any, outreach would be done, and by whom, during the environmental review process.

**RESPONSE:** We welcome working with Metro on these issues and seek to discuss, as soon as possible, how Metro would like to address these issues. Our working assumption has been that

environmental and community relations consultants would be retained who are deemed qualified by Metro and that ARTT LLC and Metro would work together on managing these processes. As stated in the initial proposal, ARTT LLC is also willing to reimburse Metro for its staff costs. We also seek to complete a services agreement with Metro to identify the time required so that prompt and efficient progress can be made together.

- Based on ridership assumptions, how much parking would the project require and where is the parking assumed to be?

**RESPONSE:** We anticipate that this issue would be studied further as part of the environmental review following agreement with Metro on a services agreement. ARTT LLC and the Los Angeles Dodgers would work together to encourage ART users to utilize Metro to get to Union Station and transfer from transit to the ART. In addition, we would encourage ART riders to enjoy local restaurant and entertainment opportunities before and after taking the ART.

- The proposer should consider if the project could/might create transit connectivity or walkability between the north and south sides of the Gold Line tracks near Los Angeles Historic Park

**RESPONSE:** We agree, and at least one ART route based on our initial studies would provide such connectivity.

- The proposer should indicate whether they would prefer that TAP be available as a form of payment

**RESPONSE:** Our initial thinking is that options would be available for ticket purchase, including that ART fare would be packaged with a Dodger Stadium admission ticket and electronically available to each rider who is attending a game or event at Dodger Stadium. Where an ART rider is not attending a game, other fares options would be available. We agree that policies should be developed with Metro to encourage transfers from other modes of Metro transit, and look forward to further collaborating with Metro on fare type.

#### Business Model and Finance

- The business plan should be informed by the planning assumptions above, and outline the following:
  - Business model

**RESPONSE:** ARTT LLC has identified funding for the initial phases of the project through permitting; at that time, the market offers availability of third-party private financing for the capital construction cost of the Project as proposed. The revenue analysis conducted to date by ARTT LLC indicate that funds available from the private operation and maintenance of the ART system are sufficient for operating costs and debt service, based on the current project budget, and will be further refined as the project proceeds. See Part II, II for additional detail.

- Project budget and the available funding envelope for the project

**RESPONSE:** See Part II, II for additional detail.

- Future plans at Dodger Stadium site

**RESPONSE:** The only plan for Dodger Stadium related to the ART is to provide a station on the Dodger Stadium property, together with appropriate pedestrian connections from the station to the stadium. As noted above, we anticipate the City will require a Project Approval under the existing Dodger Stadium Conditional Use Permit for the details of this station. The station will occupy land currently utilized for parking and will reduce parking revenue to the property owners.

- How would Metro be compensated for using Metro-owned land and facilities and Metro's authority, for company profit? This should include consideration of assumptions on ground lease payments and/or revenue sharing and/or usage fees, and any other financial payment to Metro for use of the Union Station site and facilities as part of a negotiated agreement; as well as other Metro responsibilities such as right of way acquisition, staff time, etc.

**RESPONSE:** The Project will invest and risk private funds in order to provide a transportation connection open to the public, with the environmental and other benefits noted above. We believe assisting such benefits to be delivered without cost to Metro is completely appropriate for Metro's mission. We look forward to the ability to commence discussions with Metro on the potential for use of its facilities and associated costs. As noted above, our intent is to reimburse Metro for staff time. All of these issues can be addressed when discussions can commence, and a proposed term sheet for an Exclusive Negotiation Agreement is enclosed. As noted above, to the extent Metro needs to make decisions as to sole source prior to addressing all of these issues, we respectfully request that such a decision be made.

- Staffing assumptions throughout the lifecycle of the project
  - The proposal should include the expected level and number of Metro Full Time Equivalent staff (FTEs), and percentage of staff time required and the proposed considerations related to reimbursement
  - The proposal should propose how the environmental contractor would be procured, if determined by the proposer, and how ARTT would procure these services

**RESPONSE:** As described above, we anticipate this process would be similar to other Metro environmental projects, and our team includes the former Chief Planning Officer of Metro who has extensive experience with such projects. We look forward to discussing the proposed scope of the CEQA review with Metro staff so the staffing determinations can be made. As to the EIR preparer, we anticipate working with Metro to select a contractor that is deemed qualified by Metro at ARTT LLC's cost.

- The proposal should include proposed staffing assumptions of additional Union Station personnel required in support of, but not direct operation of, the tram

**RESPONSE:** We do not anticipate the need for such personnel, but would welcome the opportunity to understand Metro's perspective on the potential for such needs.

- The proposal should directly acknowledge that financing, funding, and insuring the project and its operation will be the responsibility of Aerial Rapid Transit Technologies, LLC and its partners, including decommissioning and deconstruction of the facilities should they become non-operational

**RESPONSE:** This acknowledgement is included in Part IV.

- The proposal should include letters of interest from key financial partners

**RESPONSE:** ARTT LLC has the necessary financial resources to fund the Project and is planning to do so through environmental review and permitting, at that time, the market offers availability of third-party private financing for the capital construction cost of the Project as proposed, so ARTT LLC can assess whether additional financial partners may become involved. At the present time, it is important to receive confirmation from Metro of its willingness to assist through reaching agreements that allow the Project to publicly demonstrate its ability to proceed with permitting.

- The proposal should include a term sheet

**RESPONSE:** A term sheet for an Exclusive Negotiation Agreement is included.

- The proposal should explain how the proposer would indemnify Metro from any and all liabilities that may result from the environmental process through construction, operation and decommissioning of the project by a private party.

**RESPONSE:** Such an indemnification will be included in agreements with Metro.

#### Operations

- The proposal should indicate the level of service expected to run, and how changes to levels of service impact relevant requirements above
- The proposal should comment on the capacity of the system and anticipated wait times during peak loads
- The proposal shall address how ADA compliance will be achieved, and identify any impacts on proposed capacity

**RESPONSE:** Operational information is included in Part II, 1, 2, and 4.

This response addresses Metro's identified functional requirements, including planning, ARTT's business model and financing, and ART's proposed operations.

#### **4. Statutory, Regulatory and other Compliance Requirements**

*Identify any statutory, regulatory, compliance requirements and/or organizational strategic goals and objectives this project/initiative must satisfy. Include as a reference all known statutory and regulatory requirements.*

In this RFI, Metro has included a list of policies and laws that it believes may apply to this project. This list is not intended to be comprehensive, nor does it intend to be binding. Attachment B includes a worksheet in which the proposer can describe various policies and laws, including those listed below, and explain whether they consider them applicable and why or why not.

#### Laws and Policies

- [Americans with Disabilities Act](#)
- Metro Adjacent Development Handbook and Adjacent Construction Design Manual (Attachments D, E, F)
- [Metro Green Construction Policy](#)

- [Construction Careers Policy](#)
- The proposal should outline the preliminary terms of a [Project Labor Agreement](#) (PLA) to which LAART would commit, or otherwise argue that the PLA is not applicable to this project
- The review team recommends adherence to the American National Standards Institute (ANSI) Ropeway Standard as best practice (Attachment I)
- Metro Equity Platform Framework (Attachment C)
- LAUS Agreements (Covenants, Conditions & Restrictions and Easement Agreements between LACMTA, MWD, First 5 LA and Mozaic Apartments) to be provided should a formal agreement be entered between LACMTA and ARTT LLC.)
- Laws, policies and procedures associated with crossing freeways, if applicable
- Laws, policies and procedures associated with operating ropeways in California

On Metro projects, Metro follows these Fire/Life Safety Policies:

- National Fire Protection Association NFPA 130 Standard for Fixed Guideway Transit and Passenger Rail Systems
- NFPA 101 Life Safety Code
- NFPA 70 National Electric Code
- NFPA 72 National Fire Alarm Code
- Los Angeles Fire Department Chief's Regulation #4 Standards
- Long Beach Fire Department Fire Protection and Life Safety Certification Program
- Metro Fire/Life Safety Design Criteria

### Approval from the Board of Directors

Based on Metro's interpretation of its authority under the CPUC, which establishes Metro and its powers, including the powers of eminent domain, the Metro Board of Directors must approve all plans for the design, construction and implementation of public mass transit projects in LA County, including this one.

### Rationale

PUC § 130252 states, in relevant part: "All plans proposed for the design, construction, and implementation of public mass transit systems or projects, including exclusive public mass transit guideway systems or projects . . . shall be submitted to the commission [now Metro] for approval. No such plan shall be approved unless it conforms to the appropriate adopted regional transportation plan . . ."

CPUC General Order 164-3 (Eff. 01 May 2018) further defines its authority over Rail Fixed Guideway System, which are defined as "any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, cable car, automatic people mover, or automated guideway transit system used for public transit and not regulated by the Federal Railroad Administration or not specifically exempted by statute from Commission oversight."

Based on these code sections, the Aerial Tram from LAUS to Dodger Stadium is a public mass transit project, and therefore Metro must approve all plans for its design, construction, and implementation.

Metro is also the statutory designated transit guideway operator in Los Angeles County (see, PUC §130254), although Metro is likely able to delegate this function to a third party.

## **RESPONSE:**

### Law and Policies

The ART system will comply with all laws, policies, and procedures applicable to aerial gondola systems. For statutory, regulatory or policy requirements that may be applicable to the Project, please see Appendix B regarding compliance. ARTT LLC will follow Metro's Equity Platform Framework guidelines. ARTT LLC will have a Project Labor Agreement (PLA) consistent with Metro requirements for the Project. ARTT LLC will review Covenants, Conditions & Restrictions and Easement Agreements between LACMTA, MWD, First 5 LA, and Mozaic Apartments when provided by Metro and will work with Metro to address any issues related to ART and the aforementioned Agreements, as necessary and appropriate.

ARTT LLC will coordinate with the City of Los Angeles regarding any approvals to operate the ART system on and over City streets and rights of way. Additionally, the ART will cross State Route 110 ("SR-110"), which is under the jurisdiction of the State of California Department of Transportation ("Caltrans"). As such, ARTT LLC will directly coordinate with Caltrans on any required reviews and approvals for said crossing. ARTT LLC will also coordinate with Metro on these matters, recognizing Metro's existing relationships with both the City and Caltrans.

### Approval from the Board of Directors

ARTT LLC will comply with applicable statutory requirements related to the design, construction, operation, and maintenance of an aerial gondola system. In response to Metro's assertion that ART is subject to Metro approval under the requirements of the California Public Utilities Code ("CPUC), ARTT LLC agrees in general that such approval is appropriate since ARTT LLC has asked Metro to act as the Lead Agency for environmental clearance, together with assistance with the acquisition of surface land and/or aerial easements, as necessary, and the potential location of a passenger station at or near Los Angeles Union Station. We do ask Metro to recognize, however, that aerial gondolas and tramways are regulated by the California Labor Code, Sections 7340-7357, and the detailed implementation of design, plans, and specifications falls under the jurisdiction of the Department of Industrial Relations, Division of Occupational Safety and Health ("Cal/OSHA"), which includes an Amusement Ride and Tramway Unit.

Cal/OSHA's Amusement Ride and Tramway Unit utilizes the American National Standards Institute ("ANSI") for aerial gondola and tram systems. ARTT LLC's aerial gondola engineer, Engineering Specialties Group, serves as technical advisor to ANSI in the development and updating of ropeway system standards, thus ARTT LLC will have the most up-to-date standards and requirements expertise in the design and construction of the Project.

We look forward to further discussion with Metro to clarify the roles of various agencies. Because aerial transit is specifically regulated by the Department of Industrial Relations, Cal/OSHA, oversight comes from that agency rather than from the CPUC directly. This regulatory structure has been used in the recently opened Salesforce Tower tram in San Francisco, which contains an aerial transport system reviewed by the Amusement Ride and Tramway Unit.

Unlike other Metro projects, the ART is a privately funded/financed, designed, built, operated, maintained, and insured transport conveyance to a private property that is open to the public. Like Dodger Stadium, the ART system will be open to the public for certain events and activities but not publicly owned. It is more akin to the Palm Springs Aerial Tram as a service provided for transportation to a specific location. In response to Metro's interpretation that CPUC Section 130252 is



applicable to the ART, we note that CPUC Section 130252(a) also refers specifically to “public mass transit” and “exclusive public mass transit guideway” systems or projects: “ “All plans proposed for the design, construction, and implementation of public mass transit systems or projects, including exclusive public mass transit guideway systems or projects [] shall be submitted to [Metro] for approval. ART is not a “transit guideway system”. As described in CPUC General Order 164-E, “Rules and Regulations Governing State Safety Oversight of Rail Fixed Guideway Systems”, transit guideway systems are not defined (see Section 2.22 in the General Order) to specifically include “aerial ropeway systems”. These systems are specifically called out in state statute as being under the jurisdiction of the Department of Industrial Relations, Cal/OSHA.

## 5. Technical Requirements or Limitations

*Identify any technical requirements or limitations.*

- The station site may not interfere with planned capital projects outlined in this RFI and Attachment J

*For the purposes of continuity, some Technical Requirements were included in the Functional Requirements section*

**RESPONSE:** As detailed in the response, ARTT LLC will deliver added transit without interfering with Metro’s capital program and will support Metro’s continued nationwide leadership in mobility innovation.

## 6. Other Project Information

*Identify any other relevant project information.*

**RESPONSE:** N/A

Attachments:

Attachment A – LAUS Master Development Site Maps  
Attachment B – Applicable Policies and Laws worksheet  
Attachment C – Metro Equity Platform Framework  
Attachment D – Metro Adjacent Development handbook  
Attachment E – Metro Adjacent Construction Design Manual  
Attachment F – Metro Adjacent Development Review Intake Form  
Attachment G – Dodger Stadium Express Overview  
Attachment H – Dodger Stadium Express Survey 1 & 2  
Attachment I – ANSI Ropeways in Urban Transport  
Attachment J – LAUS Spatial Context  
Attachment K – CalOSHA Guidelines for the submission of designed, plans and specifications prior to the construction of new, relocated or modified passenger tramways

## PART II. PROJECT DESCRIPTION AND PERFORMANCE OUTCOMES

*To Be Completed by Applicant*

### EXECUTIVE SUMMARY

*Please provide a synopsis of the key points of the business case for your proposal. This should include an outline of the solution/service to be obtained and your expectations regarding the potential partnership. Your summary should briefly touch on:*

- What the project or service entails
- Boundaries/scope of the project -- what is included and excluded
- What benefits the project or service will provide to Metro and/or our customers/taxpayers
- How the project or service aligns with the goals and objectives of the organization
- Details regarding regulatory and/or statutory compliance
- Estimated costs and potential for cost sharing
- Minimum viable product/project size and the potential to scale or expand
- Risks and how they will be mitigated
- How performance will be benchmarked and measured
- Implementation strategy and key milestones
- Key assumptions and constraints foundational to the analysis

Any other information you feel is relevant to tell the story of how your product, project, or service will help LA Metro to improve mobility in the Region

**RESPONSE:** ARTT LLC proposes to connect Los Angeles's Union Station to the Dodger Stadium property via the Los Angeles Aerial Rapid Transit system ("ART" or the "Project"). ART is a proven, safe, clean, sustainable, and highly efficient form of transportation that will serve as both a reliable rapid transit system and first/last mile connector, and an iconic new regional tourist destination in and of itself, offering wonderful views of Los Angeles.

ARTT LLC commits to privately fund and obtain financing for the capital construction cost of the proposed Project's direct alternative, as well as privately operate and maintain the ART system. We seek Metro's assistance in three specific areas: potential location of the ART station at Union Station; to act as Lead Agency for environmental clearance; and to potentially assist with matters related to surface land acquisition and aerial easements, as needed. ARTT LLC shall cover the costs associated with the preparation and certification of any required environmental documents including an EIR under CEQA. ARTT LLC shall arrange and pay for all required CEQA studies and reviews at its sole costs and expense.

Although Dodger Stadium is one of the region's most visited venues, the Metro transit system does not include any existing or proposed permanent transit connections. As other venues such as Staples Center and the Los Angeles Memorial Coliseum are now conveniently accessed by transit, and Metro has begun working on a direct connection to LAX, the importance of providing a permanent transit connection to Dodger Stadium has become ever more necessary.

Currently, the Dodger Stadium Express buses provide a connection from Union Station to Dodger Stadium on game days, carrying approximately 1,500 people on average per game, with an average 20-minute travel time to and from the game. While this service is very beneficial and much appreciated, when complete the ART system can carry 5,000 people per hour per direction, and the travel time from Union Station to Dodger Stadium will be about 5 minutes.

Many Dodger fans arrive at Dodger Stadium within two hours prior to the start of a game. At full capacity, 10,000 fans could be transported to the stadium in the two hours prior to a game via the gondola system. The average attendance at a Dodger game is approximately 46,000; accordingly, nearly a quarter of the fans from around the region at a given game could arrive not by car, but by gondola connected to Metro's regional transit system. This would take an average of roughly 3,200 cars off the streets before and after a game.

ARTT LLC and the Los Angeles Dodgers are coordinating to identify available sites at the Dodger Stadium property to locate an ART station. ARTT LLC has also identified potential sites near/adjacent to LAUS, including one site owned by Metro, at which to locate an ART LAUS station. The ART would provide elevated aerial transport either directly (in a straight line), or through two straight lines that connect at an angled station mid-point between LAUS and Dodger Stadium.

ART contributes to Metro's mission of providing transportation services – indeed, economical and environmentally compatible mobility *choices* – and provides an excellent return on taxpayer investment for Metro as there are no Metro funds being requested. Further, ART significantly improves mobility in and around the Dodger Stadium property by providing alternative access to the facility resulting in up to between a 20 to 25% reduction in private automobile trips to and from the stadium on an average game day, thereby reducing existing traffic for the benefit of surrounding communities and neighborhoods.

Further, ART is also consistent with Metro's goals and objectives, including advancing the following Metro Core Business Goals:

- *Promote extraordinary innovation:* The ART system will use state-of-the-art, zero-emission technology, demonstrating the potential of aerial transit in Los Angeles as a key connector to the regional backbone transit system. It will deliver added transit without impacting Metro's capital program and will support Metro's continued nationwide leadership in mobility innovation.
- *Exercise fiscal discipline to ensure financial stability:* ARTT LLC will create the structure for the financing, design, construction, operation, and maintenance of the ART system at no cost to Metro and will obtain necessary financing for the capital construction of the Project.
- *Improve the customer experience and expand access to transportation choices:* Adding to the shuttle bus service currently provided by Metro to Dodger Stadium, this new transportation option will expand access to transportation choices to Dodger Stadium and serve significantly more visitors to the stadium via transit, thus further reducing congestion in the local community and on surrounding regional arterials and freeways.
- *Increase transit use and ridership:* The ART system will substantially boost Metro system ridership by Dodgers fans on game days and could contribute adding other "choice riders" to Metro's system such as tourists. In essence, ART will support Metro's ambition for people to choose transit for mobility. The ease of attending games, events, and recreational activities through ART will encourage thousands of new "choice rider" trips per year and may encourage more regular ridership.

The project assumptions which are most relevant, and which can be validated against existing projects, are related to project costs, projected ridership, and transit service.

The ART, as proposed, is estimated to cost \$125 million for a direct route. Potential project costs have been developed at a number of levels for different project elements and compared to costs of other

aerial transit projects. Costs for the electromechanical equipment and for operations were compared to installations in London, New York City, Portland, Telluride, and Austria. Costs for facilities and tower structures were estimated by local construction professionals. Costs for property and rights-of-way were estimated by real estate and rights-of-way experts.

Ridership projections for the project have been developed with assistance from the Los Angeles Dodgers, transportation professionals, and aerial ropeway engineers. The transit capacity of 3S systems such as that proposed for ART is designed for in excess of 5,000 passengers per hour per direction. This capacity has been verified with providers of such systems. Similar systems operate in Russia and Germany with similar capacities. Gondola systems are proven technologies with many installations worldwide to reference. The major transit systems identified were all referenced for their capacities and system availabilities.

ARTT LLC seeks to build and operate the ART system as quickly as possible. To that end, our goal is to issue the Notice of Preparation for the Draft EIR in the fall of 2018. We assume that it will take approximately twelve months to complete all phases of CEQA, after which we will complete the Final Design of the certified alternative and then proceed through permitting, construction, testing and, operations. We anticipate full operation of the system in late 2022.

As noted above, statutory authority to regulate aerial ropeway systems in California is the purview of the State of California Department of Industrial Relations, Cal/OSHA. ARTT LLC will comply with laws, policies, and procedures set forth by Cal/OSHA. Cal/OSHA employs ANSI B77 standards as a basis of their regulations. The Project will also comply with other applicable codes and regulations in designing and constructing its stations and towers.

Since ART will be privately owned and operated, ARTT LLC will evaluate the success of the system on internal criteria including ridership volume, revenue, sponsorship and advertising, operational performance, and customer satisfaction. If desired, we will work collaboratively with Metro to evaluate overall performance of ART as a privately-operated “first/last mile” extension of Metro’s transit system.

Gondola systems are incredibly safe, resilient and ecologically-friendly. The ART system would be built to the current structural and seismic standards, and its systems have excellent safety records. This system will be delivered with multiple redundant features to ensure the safety of riders, employees, and the general public. Aerial gondola systems are also emission-free, and the ART system would replace a large number of existing car trips that currently occur in congested conditions, helping both Los Angeles and California continue to be global leaders in greenhouse gas emission and associated pollutant reduction. ART ridership would significantly reduce vehicle miles traveled to and from Dodger Stadium, as well as reduce greenhouse gas and associated emissions.

In the last decade, cities worldwide have successfully utilized aerial rapid technology to augment their transit systems or in some cases serve as their transit system. These cities include Portland, OR; London, England; Mexico City, Mexico; La Paz, Bolivia; Medellin, Columbia; Bogota, Venezuela; and Singapore.

## DETAILED PROJECT INFORMATION

### I. Project Description

*Please provide a short, high level description of the project – what it is and what it is intended to accomplish.*

**RESPONSE:** ARTT LLC proposes to connect Los Angeles' Union Station, Southern California's transportation hub, to the Dodger Stadium property via the proposed Los Angeles Aerial Rapid Transit system ("ART" or the "Project"). ART is a proven, safe, clean, sustainable, and highly efficient form of transportation that will serve as both a reliable rapid transit system and an iconic new regional tourist destination in and of itself, offering wonderful views of Los Angeles.

ART will travel a little over one mile in about 5 minutes and can carry roughly 5,000 people per hour per direction. By creating a high-quality and high-capacity transport link between LAUS and Dodger Stadium, ART ensures that there will be more viable choices in making a trip to a Dodger game or special event at the stadium. With Metro's existing and planned expansion of its transit system, coupled with other providers such as Metrolink, Amtrak, and other municipal bus operators whose services all converge at LAUS, ART provides the opportunity for anyone on the Los Angeles County region to access Dodger Stadium via transit.

ART is an aerial gondola system. Aerial technology – consisting of passenger stations, a ropeway that holds and transports the cabins, and towers to hold the ropeway – has become increasingly popular throughout the world as a high-capacity, high-quality, and economical transit mode. ART will utilize "3S", or triple-rope, technology that enables larger passenger cabins and thus more carrying capacity than other available aerial technology including a single or mono-cable system or an aerial tram.

Although Dodger Stadium is one of the region's most visited venues, the Metro transit system does not include any existing or proposed permanent transit connections. Indeed, regular bus service to Dodger Stadium was discontinued in the early 1990's. As other venues such as Staples Center (Lakers, Clippers, Kings) and the Los Angeles Memorial Coliseum (Rams, USC) are now conveniently accessed by transit, and Metro has begun working on a direct connection to LAX, the importance of providing a permanent transit connection to Dodger Stadium has become ever more necessary.

With the ART system's ability to overcome grade and elevation issues, while providing safe, environmentally-friendly, and high-capacity transit connectivity, it has emerged as the best approach to link the Dodger Stadium site to the region's rapidly growing regional transit system at LAUS. The technology of aerial rapid transit systems has improved to the point that they can carry a capacity equivalent to that of many light rail systems in terms of passengers per hour. The capacity can be quickly increased or decreased to meet demand associated with the intense peaks of activity associated with games and events at Dodger Stadium simply by increasing or decreasing the number of cabins on the ropeway.

Thousands of visitors could reach Dodger Stadium via ART when attending a Dodger game or event at Dodger Stadium. The reduction in thousands of automobiles per game or event will improve the flow of traffic for other vehicles as well as reduce the impacts of congestion on nearby freeways and surrounding areas, thereby improving the game-day transportation experience for neighbors and visitors.

Aerial transit technology is a safe, proven form of rapid transportation. In the United States, Manhattan's Roosevelt Island (42 years) and Portland, Oregon (10 years) provide longstanding urban examples of aerial transit. As world cities seek to combat climate change and congestion with innovative new transit approaches, aerial gondola systems are increasingly popular as effective transportation solutions, including recent examples in London, England; Koblenz, Germany; Mexico City, Mexico; and several South American cities. ART systems can be constructed and deployed more economically and expeditiously than fixed light and heavy rail and reduce air pollution or greenhouse gas emissions.

Indeed, the Project is a game-changer for Metro and the City of Los Angeles. The ART will serve as a new and privately-funded addition to Greater Los Angeles's rapidly expanding transit and mobility-choice network. The proximity of the Dodger Stadium property to Union Station – just over one mile – enables a short and convenient connection to the regional system's transportation hub. The ART system can also become an attraction in and of itself that draws more visitors to take Metro.

## 2. Project Scope and Duration

*Define the project/initiative's scope (e.g., technology, organizations, users, processes, functions, etc.), and any geographic boundaries. Explain what your proposal includes and excludes, and proposed project length.*

**RESPONSE:** The ART system includes stations where the passengers enter and exit the system, cabins in which the passengers ride, towers which hold up the cables, and the cables. ARTT LLC proposes one station located at the Dodger Stadium property and another at or near Union Station. Depending upon the alignment, there could also be an intermediate station. The approximately one-mile ride from Union Station to Dodger Stadium would be short and enjoyable, lasting about five minutes.

The geographic boundaries will be the approximately one-mile between Union Station and Dodger Stadium. The ARTT LLC team has considered a number of possible alignments for the ART system, which we look forward to discussing with Metro and other stakeholders. We anticipate several alternative alignments will be analyzed as part of the Project's environmental review.

The preferred aerial rapid transit technology for the Project is a tri-cable ("3S") detachable gondola system, which is the most advanced technology available and provides the highest transport capacity. Typical 3S cabins comfortably carry between 30 and 40 passengers each, and the system is capable of transporting 5,000 or more passengers per hour per direction.

Currently, many Dodger fans arrive at Dodger Stadium within two hours prior to the start of a game. At full capacity, 10,000 fans could be transported to the stadium in the two hours prior to a game via the gondola system. Since the average attendance at a Dodger game is approximately 46,000, nearly a quarter of the fans at a given game could arrive not by car, but by gondola. This would take approximately 3,200 cars off the streets before and after a game.

Aerial rapid transit systems have been proven as reliable, efficient, and cost-effective rapid transit solutions.

The ART would promote Los Angeles as a leader in high-capacity aerial urban mobility in the United States. The proposed system will use state-of-the-art technology, demonstrating the potential of aerial transit in Los Angeles as a key connector to the regional transit system. The Project could also demonstrate the potential for ART in the region, as other projects of similar scope have been

proposed, including a gondola system that would take tourists to the Hollywood sign. Mayor Garcetti described the ART and the Hollywood project as potential “twin crowns to change the landscape of our City.” Other U.S. cities currently considering the addition of aerial rapid transit systems to expand transit options include Austin, Boston, Miami, New York, Oakland, and Washington D.C.

### 3. Project Timeline

*Please provide a proposed timeline for project design and execution, including all key milestones. Specifically include information about the timing of provision by Metro of any property and/or services.*

**RESPONSE:** ARTT LLC seeks to build and operate the ART system as quickly as possible. To that end, our goal is to issue the Notice of Preparation (“NOP”) for the EIR in the fall of 2018. We assume that it will take twelve months to complete all phases of CEQA, after which we will complete the Final Design of the certified alternative and then proceed through permitting, construction, testing and, finally, operations. We anticipate full operation of the system in late 2022.

ARTT LLC commits to fund and obtain financing for the ART, in order to design, build, operate, and maintain the ART connecting Dodger Stadium to LAUS. ARTT LLC seeks Metro’s assistance in three areas: potential location of the ART station at Union Station; Metro to be Lead Agency for environmental clearance pursuant to the California Environmental Quality Act (“CEQA”); and Metro to assist, as necessary, in the acquisition of surface land and/or aerial easements needed for the ART system. ARTT LLC seeks to fully reimburse Metro for all direct costs of the above, as well as for the costs of the Metro staff time for the above work.

ARTT LLC proposes a services agreement for both the environmental review and for Metro assistance on surface land acquisition and aerial easements, as follows:

- ARTT LLC shall cover the costs associated with the preparation and certification of any required environmental documents including an EIR under CEQA. ARTT LLC shall arrange and pay for all required CEQA studies and reviews at its sole costs and expense. Metro shall exercise its own independent judgment in the review and certification of any environmental documents prepared in connection with Metro’s consideration of the Project; and
- ARTT LLC proposes to partner with Metro in the acquisition of required surface land and aerial easements as needed to construct, operate, and maintain the ART. ARTT LLC will fully reimburse Metro for any costs incurred by Metro in assisting ARTT LLC with land acquisition and/or aerial easements, including all Metro staff time.

We have proposed that Metro act as Lead Agency for CEQA. Our goal is to begin work with Metro immediately to issue the NOP before year’s end, proceed through Scoping, and begin the environmental technical analysis. We will develop a more detailed schedule for the analysis, documentation, and review of each section of the EIR so that Metro staff can anticipate the timing of their involvement.

Concerning property negotiations with Metro for a station location and pedestrian access at Union Station, we anticipate initial negotiations will be part of an Exclusive Negotiation Agreement (“ENA”) between ARTT LLC and Metro; the initial draft of a term sheet for the ENA is included in

this submission. Lease negotiations, if necessary, will follow. We anticipate beginning construction in 2021.

Concerning the timing of Metro's assistance with property acquisition (including the exercise of eminent domain, as necessary), we assume that Metro will not be able to use their eminent domain powers until the final alignment has been selected and the EIR has been certified. We should note here that among the early alignment alternatives under review, we are studying several that almost exclusively operate over public rights-of-way. If an alignment is selected that does operate over private properties, we may request Metro's assistance with property acquisition and, if necessary, the use of eminent domain. We anticipate property acquisition would occur in 2020.

#### 4. Project Requirements

*Describe all requirements for the project as it is described above, including those related to operations, facilities, property, labor, information technology, data access, etc. Please give additional consideration to Material, Technical, and Labor requirements.*

**RESPONSE:** This response further describes the ART system. As noted above, ARTT LLC commits to fund/finance, design, build, operate, maintain, and insure the ART. ARTT LLC will fully comply with all applicable laws, regulations, and rules related to the design, construction and operation of the ART.

The ART system's interface with Metro and its property will be at the station to be located at or near Union Station and pedestrian access to the station.

ARTT LLC proposes a services agreement that would commence with the environmental review and proceed as needed for other Metro assistance, including the potential for help to acquire surface land and aerial easements.

##### **Ropeway Technology | Safety**

Aerial gondola systems are classified based on the number of ropes or cables used in their operation. 3S systems, which ART would use, rely on three steel cables to support and move the cabins. Two stationary cables (track ropes) provide support for the running wheels of the cabins, while the third cable (haul rope) circulates continuously around the system. This tri-cable technology enables 3S systems to provide the highest capacity of any gondola, with larger cabins, longer spans, and greater lateral stability. The haul rope – which is the propulsion rope – is moved by the turning of a large sheave known as a “bull wheel.” The bull wheel is turned by motors located at the station. The ropeway is looped around the bull wheel at each station and the haul rope moves at a steady pace around the bull wheels pulling the cabins in and out of each station.

The proposed ART system will be delivered with multiple redundant features to ensure the safety of riders, employees, and the general public. ARTT LLC anticipates that the cabins will feature a combination of video monitoring and/or audio communications, as well as push-to-talk stations in the cabins. ARTT LLC also anticipates the video monitoring of station activities while attendants are on station platforms.

Aerial gondola systems have alternate power sources to provide backup power in the event of an electrical failure. The most common source of backup power is combustion engines; however, because of technological advances and because of our goals of achieving an energy efficient system,



we are assessing the use of electrical battery storage as emergency power for the ART system. The final size, source and quantity of backup power will be determined in the detailed design phase.

### *Gondola Cabins*

3S cabins typically carry between 30 to 40 passengers each. The cabins allow for sitting or standing, wheelchairs and baby strollers, and can accommodate bicycles. Cabins are fully accessible pursuant to requirements of the American with Disabilities Act (“ADA”). Cabins can be air conditioned and ventilated. The cabins can also include cameras for security to view the inside of every cabin and a communication system so passengers can speak to the operator, similar to Metro’s existing security approach on its rail systems.

The cabins move at approximately 16 to 18 miles per hour. As they enter a station they slow down to allow passengers to enter and exit the moving cabin. This is achieved by detaching the cabins from the haul rope in the station. Once a cabin is detached from the haul rope, the cabin can move at a speed independent of the haul rope, allowing the cabins “on line” (i.e., not in a station) to continue to move at a higher speed. Based on ARTT LLC’s preliminary analysis, cabins will arrive in a station approximately every 25 seconds and once a new load of passengers has boarded, the cabin will re-attach to the cable and advance to the next station.

### *Towers*

The ART system will require approximately four to five towers, which will be built to current seismic and structural standards. The form, location, and height of towers will vary depending on the proposed alignment. Towers would be designed to meet or exceed applicable codes and standards.

The design of the towers can vary widely, as evidenced in the many different approaches to tower design in gondola systems around the world. At most ski resorts, for example, towers are typically utilitarian in design and resemble high-tension power structures. In urban areas, however, towers are often designed more aesthetically and they add a positive visual element in the urban environment. The Project will strive for aesthetic compatibility.



**Images (left to right):** Emirates Air Line tower in London, England; Seilbahn tower in Koblenz, Germany

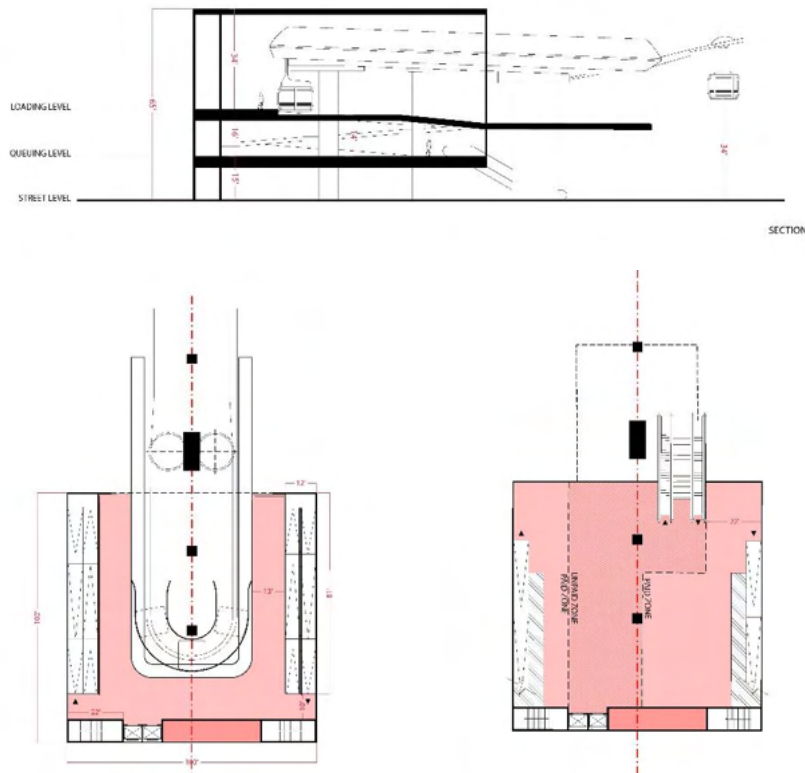
## Stations

Stations include areas for ticketing, queuing, loading and unloading of passengers, operations, and for the system equipment. One station will also include a storage and maintenance area for the cabins as well as staff break rooms, lockers, and parts storage. It is anticipated that the storage and maintenance area will be located at the Dodger Stadium property. Stations will be ADA accessible.

A footprint of 15,000 SF would support the basic elements of a station, including vertical circulation, and provide the length needed for the cabin deceleration and acceleration between transit speed and boarding speed. The station with the storage and maintenance facility will require a footprint of 30,000 square feet. As noted, the ART system intends to locate the storage and maintenance facility at the Dodger Stadium property. See attachments for prototypical station plans and sections.

Within the stations, the loading and departure platform will necessarily be elevated so that the cabins leave the station well above people, cars, trees, and other urban elements in the immediate vicinity of the station. The cabins will continue to climb as they leave the station. The elevated arrival/departure platform also allows for a sufficient length of ramps for queuing. Stations will also include elevators and stairs.

Stations also require access to the mechanical systems for servicing. Once the potential station locations are more firmly identified, specific access provisions will be included in the station design.



**Images (top to bottom):** Section of a prototypical gondola station; Plans of prototypical gondola station [loading level (left), queuing level (right)]

### **Potential Station Locations**

ARTT LLC has identified two potential station locations at or near Union Station.

Metro Potential Development Site C. Metro identified “Development Site C” at the corner of Cesar Chavez and Vignes as a potential development site in the Industry Forum package prepared for the solicitation of a Master Commercial Developer. The site is adjacent to well used bus stops, is across the street from the East Portal entrance to Union Station and Patsaouras Plaza and is within a 5-minute walk (0.25 mile) from the middle of the Union Station pedestrian passageway. This site also presents a great opportunity as a location that is highly visible from Cesar Chavez Avenue.

Alameda Street. ARTT LLC has also identified potential station locations over Alameda Street near Union Station, which in addition to carrying passengers from Union Station, could provide an opportunity to draw visitors to the historic El Pueblo de Los Angeles Historical Monument and provides access to the Civic Center and Downtown.

Should an Alameda Street station be selected as the preferred location for an ART station near Union Station, it is likely that an additional station would need to be located somewhere in the vicinity of Los Angeles State Historic Park in order to accommodate turning movements of the ART into the Dodger Stadium property. Were this to occur, an opportunity to facilitate access to the Los Angeles State Historic Park from the areas west of Broadway Street may be possible. ARTT LLC is willing to work with the public and decision makers who wish to pursue such access.

### **Operation of the ART System**

ARTT LLC proposes to operate the ART system that will connect Los Angeles’s Union Station, Southern California’s transportation hub, to the Dodger Stadium property. ART is a proven, safe, clean, sustainable, and highly efficient form of transportation that will serve as both a reliable rapid transit system and an iconic new regional tourist destination in and of itself, offering wonderful views of Los Angeles.

ART will travel a little over one mile in about 5 minutes and can carry roughly 5,000 people per hour per direction. By creating a high-quality and high-capacity transport link between LAUS and Dodger Stadium, ART ensures that there will be more viable choices in making a trip to a Dodger game or special event at the stadium. With Metro’s existing and planned expansion of its transit system, coupled with other providers such as Metrolink, Amtrak, and other municipal bus operators whose services all converge at LAUS, ART provides the opportunity for anyone on the Los Angeles County region to access Dodger Stadium via transit.

Gondola cabins enter, traverse, and depart stations under fully automated control. Station attendants are within each station to assure safe boarding or to execute stops, if necessary. Attendants also provide customer interaction and observation; if a passenger needs special assistance, an attendant may execute either a slowed or stopped cabin. Typically, a separate operator sits in a booth adjacent to the boarding area and monitors screens, which show activities in each cabin and station as well as all of the system controls. The operator does not typically interact with the passengers.

ART will provide service to all pre-season, regular season and post-season Los Angeles Dodger games and any special events (e.g., concerts) at the Dodger Stadium property. ART may provide service on some or all days of the week to accommodate tourists who wish to visit the Dodger Stadium or simply to ride the ART. Additionally, ART may provide service to adjacent

neighborhoods and/or Elysian Park visitors. Appropriate operational studies and plans will be formulated and discussed as part of the environmental review process.

Since ARTT LLC will operate, maintain, and secure the ART with its own staff, we do not anticipate that Metro will need to add to its staff to support ART. Metro may realize more passengers riding its system, but the addition of choice riders to Metro's excellent services is a positive result and will provide economic benefits to Metro and environmental benefits to our region.

ARTT LLC assumes that the ART will operate in concert with other mobility choices available to access the Dodger Stadium property, including Metro's Dodger Stadium Express. Should Metro wish to re-evaluate continuation of the Dodger Stadium Express, ARTT LLC assumes that Metro will consult and reach agreement with the Los Angeles Dodgers and other stakeholders on the future of this service.

As noted above, forms of payment technology and fare options are being explored by ARTT LLC. We look forward to discussing these issues further with Metro.

### **Maintenance**

ARTT LLC will maintain the ART system. The detailed maintenance plan will be developed in conjunction with the system design.

**a. Materiel Requirements**

*Include requirements for physical materials or assets to be supplied by Metro, including property, facilities, rolling stock, vehicles, supplies, or other assets.*

**RESPONSE:** As detailed above, as to property and facilities, ARTT LLC has identified two potential station locations at or near Union Station: Metro's identified "Development Site C" and over Alameda Street near Union Station. If Development Site C is selected, ARTT LLC would seek a ground lease with Metro for the ART. For any station location at or near Union Station, ARTT LLC would coordinate with Metro concerning pedestrian access to the station.

**b. Technical, Interface, and Data Requirements**

*Include requirements technical capabilities or capacity to be provided by Metro, including any required IT infrastructure, hardware, software, systems, interface, or storage requirements, as well as any data exchange requirements or protocols to the level of detail needed to assess capacity, labor, and cost. A summary table may be appropriate.*

**RESPONSE:** At this time, ARTT LLC does not anticipate having any technical, interface, or data requirements from Metro. See Part II, 5 regarding data collection, reporting, and sharing for additional information.

**c. Labor, Contractor Support, and Other HR Requirements**

*Include requirements for human resources including labor (specify specific trade or union if applicable, as well as non-covered employees), all proposed contractor support, and management/senior leadership.*

## RESPONSE:

### Requirements from Metro

ARTT LLC commits to privately fund and obtain financing for 100% of the design, capital construction, operation, and maintenance costs of the direct route for the proposed Project. No funds are being sought from Metro. We seek Metro's assistance in three areas: location of the ART station at or near Union Station; to act as Lead Agency for environmental clearance; and to assist with matters related to surface land and aerial easements acquisition, as needed. The Project seeks to fully reimburse Metro for these items, as well as the costs of the Metro staff time for the above work.

ARTT LLC is aware of the many projects and programs that Metro has committed to deliver to Los Angeles County residents, and we know that adding another endeavor will require additional resources from Metro. Accordingly, ARTT LLC's Project team seeks to provide as much efficiency as possible to Metro staff while assuring the resources are available for their independent review to ensure the best possible solutions for Metro approval. Consistent with Metro's goals for its Office of Extraordinary Innovation, we look forward to working together so this investment is an innovative, sustainable, zero-emission rapid transit solution to Dodger Stadium, that will also support the improvement of mobility throughout the region.

We provide the following, additional detail about ARTT LLC's requests of Metro:

- Location of the ART station at or near Union Station. An ART station at or near Union Station would provide seamless connections for passengers transferring from regional rail, bus, or local transit. In the event that the station is adjacent to Union Station, but not on Metro property, we will work with Metro to ensure access for ART passengers through Union Station in a safe and appropriate fashion. The Project team will work with Metro staff to assess the previously noted sites and to take into account any of Metro's long-range plans for the Union Station property.
- Lead Agency for environmental review pursuant to CEQA process. ARTT LLC proposes to contract with and fund preparation of the required CEQA documentation for the Project. To the extent feasible for the ART, ARTT LLC will utilize Metro's "on call" list of approved consultants for preparation of the technical analysis and environmental review. We will initially develop a schedule of deliverables jointly with Metro and ensure that qualified consultants provide all necessary technical analysis and environmental documents to the appointed Metro staff for their review. ARTT LLC shall cover the costs associated with the preparation and certification of any required environmental documents including an EIR under CEQA. ARTT

LLC shall arrange and pay for all required CEQA studies and reviews at its sole costs and expense. Metro shall exercise its own independent judgment in the review and certification of any environmental documents prepared in connection with Metro's consideration of the Project. Additionally, ARTT LLC is fully committed to full and open community engagement and collaboration and will be retaining community outreach experts to work with our team and Metro during the environmental review, design, and construction processes.

- Assistance with acquisition of surface land and aerial easements, as necessary. ARTT LLC is committed to paying fair market value for private surface land and aerial easements required to deliver the Project. ARTT LLC anticipates entering into a services agreement with Metro for Metro personnel working with ARTT LLC in the acquisition of surface land and/or aerial easements. ARTT LLC shall fully fund Metro staff time and all direct expenses related to these activities.

## 5. Data Collection, Reporting, and Sharing

*Please describe what data and information will be collected including type, scope, and format, how such data and information will be collected and reported to project partners, and what limitations, if any, would be imposed on the use, discussion, reporting, or sharing of this data and information,*

**RESPONSE:** ARTT LLC anticipates it may collect data from the ART customer base as part of customer surveys or interviews. Information to be collected could include how the passenger arrived at the ART (e.g., bus, train, car, ride-share, bike, or walk); if by car, where did they park; where the passenger came from; why they chose the ART to access a game/event at Dodger Stadium; how often the passenger rides the gondola (one time only, every Dodger game, etc.); and what improvements they would like to see, if any. We also anticipate collecting data on the volume of ridership so that we can calibrate the flow of the cabins. We would be willing to meet regularly with Metro to discuss this data to assist Metro in managing crowd flow through and around Union Station. Certain data, consistent with current practice, may be proprietary to ARTT LLC and/or the Los Angeles Dodgers and would not be for public release.

## 6. Outline of Potential Terms and Conditions

*Please describe any essential terms and conditions that could be part of a subsequent agreement with Metro.*

**RESPONSE:** ARTT LLC is pleased to provide Metro with the enclosed draft term sheet for an Exclusive Negotiation Agreement (ENA) that sets forth the terms and conditions for a services agreement with Metro that would commence with CEQA, as well as for a possible lease of property at Union Station for an ART station, and then continue as appropriate for surface land and aerial easement acquisition. As noted above, we are requesting a sole source determination.

## 7. Disadvantaged/Small Business Enterprise Participation

*Please describe a goal for participation of disadvantaged/small business enterprises (DBE/SBE), as well as expected strategies to achieve that goal.*

**RESPONSE:** ARTT LLC has a goal of including DBE/SBE contractors, to the extent feasible, in the design, construction, operation, and maintenance of the ART at no cost to Metro.

## 8. Labor Requirements

*If the project includes occupations covered by Federal, State, or Municipal/Local wage laws, please describe and indicate how compliance will be documented and certified.*

**RESPONSE:** ARTT LLC will have a Project Labor Agreement (PLA) for the Project, consistent with Metro policies, that governs labor requirements for the Project.

## 9. Points of Contact: Roles and Responsibilities

*Please include information about the individuals who will be responsible for delivering the project, including contact information and key responsibilities for:*

- *the lead point of contact for project implementation;*
- *any functional and technical experts that will be involved and may need to be contacted by Metro staff; and*
- *any technical support or service personnel that may need to be contacted by Metro staff.*

**RESPONSE:** ARTT LLC is dedicated to delivering this Project and has all support and resources necessary for successful project implementation, including an assured ridership base through partnership with the Los Angeles Dodgers and strong support to date from the City of Los Angeles and other stakeholders. Representatives met in Europe this summer with both senior executives and technical staff of the two major manufacturers of gondola systems in the world, which both have US companies as well: Doppelmayr USA, Inc. and Leitner-Poma of America, Inc. At these meetings, we presented the program and reviewed route alternatives; these meetings generated significant enthusiasm and interest from manufacturers for participation while reconfirming the feasibility and ridership benefits of the proposed Project. In addition, team representatives recently toured the successful projects in London, Koblenz (Germany), and Portland, Oregon to refine concept planning with real-life examples of visitor interface, integration into the urban fabric (London and Portland) and access coordination with other transportation modes such as bicycles, automobiles, light rail, and other transit connections. In addition to support of ownership and the Los Angeles Dodgers, the Project continues to be supported by a team of highly-qualified consultants with the expertise necessary to implement the Project. Following submittal of the initial proposal in April, the expert team has continued to advance project design together with key issues such as environmental and air quality analysis, route alternatives and community outreach.

The lead point of contact for the team is as follows:

The Project Director of Aerial Rapid Transit Technologies LLC (ARTT) is **Martha Welborne**, the former Chief Planning Officer of Metro, who led Metro's long-range transportation program in Los Angeles County, and initiated the design and delivery of 12 new transit corridors approved by County voters. She has a track record of delivering ambitious, public-serving projects, including as Managing Director of the Grand Avenue Committee, and in her work to initiate what became Metro's rapid bus transit system.

Martha Welborne, Project Director  
700 South Flower Street, Suite 2995  
Los Angeles, CA 90017  
[martha.welborne@aerialrapidtransit.la](mailto:martha.welborne@aerialrapidtransit.la)

As stated in the initial proposal, the other lead consultants include, in a Project Steering Committee, the following:

**Engineering Specialties Group** provides engineering and consulting services for the transportation and ropeway transit industries. ESG professionals have provided these services for countless clients and installations across the resort and urban environments for over 40 years, including for the recently-completed gondola component of the Transbay project in San Francisco and many others. Staff remain on the forefront of the adoption of ropeways into the urban environment and sit on the national standards committee for passenger ropeways (ANSI B77).

Mike Deiparine, Senior Consultant  
8730 Tallon Lane, Suite 200  
Lacey, WA 98516  
[mike.deiparine@scjalliance.com](mailto:mike.deiparine@scjalliance.com)

**pointC, LLC** — and its predecessor entity Planning Company Associates — has provided strategic mobility services to both public and private clients for the past 32 years. Led by David Grannis & Tony Harris, pointC specializes in innovative mobility strategies, transportation funding and economical and efficient project delivery. pointC has been involved in numerous mobility/transportation projects of regional significance; examples include the funding/financing of the Alameda Corridor, the structure and delivery of the Los Angeles to Pasadena Gold Line, funding for the coastal portion of the Hearst Ranch Conservation agreement, and strategic advisory services to Metro as part of the Union Station Master Plan.

David Grannis, Partner  
120 North Madison Avenue  
Pasadena, CA 91101  
[dgrannis@pointcpartners.com](mailto:dgrannis@pointcpartners.com)

**Latham & Watkins LLP** is a global law firm founded in Los Angeles over 70 years ago with extensive experience handling complex land use and infrastructure matters, including transportation projects. Latham lawyers have extensive familiarity with Metro, having assisted with the City approvals for the Union Station development agreement, Union Station headquarters and MWD headquarters, as well as representation of many other property owners in successful partnerships with Metro, the City, and other public and private stakeholders.

Cindy Starrett  
Beth Gordie  
355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071  
[cindy.starrett@lw.com](mailto:cindy.starrett@lw.com)  
[beth.gordie@lw.com](mailto:beth.gordie@lw.com)



Other functional and technical experts that will be involved and may be contacted by Metro staff include:

**HR&A Advisors, Inc.**, is a real estate and economic development consulting firm providing strategic advisory services to transit agencies related to business planning, economics, public-private partnerships, and transit-oriented development. HR&A has worked with Metro on a number of transformative projects. HR&A also has experience developing implementation strategies for other aerial transit systems in the United States, notably the New York City Sky Line, a proposal to bring a gondola system from Lower Manhattan to Governor's Island and Red Hook in Brooklyn.

Eric Rothman, President  
99 Hudson Street, 3<sup>rd</sup> Floor  
New York, NY 10013  
[erothman@hraadvisors.com](mailto:erothman@hraadvisors.com)

**Johnson Fain** has established itself as an architecture, planning and interior design firm known for its creative approach to the built environment over the past 28 years of professional experience in the United States and overseas. Johnson Fain has completed over forty transit related and transit-oriented community projects. All have been extremely successful and have added important elements and improvements to mobility and the urban fabric. A few of these projects include the LA Metro System-wide Station Design, the Culver City TOD Visioning Study, the Fullerton Transportation Center and Blossom Plaza at the Chinatown Gold Line Station.

William H. Fain, Jr., FAIA  
1201 North Broadway  
Los Angeles, 90012  
[wfain@johnsonfain.com](mailto:wfain@johnsonfain.com)

**Ramboll** is a leading international engineering, design, and management consultancy. Headquartered in Copenhagen and privately owned, Ramboll has more than 13,000 employees across 300 offices in 35 countries. The Ramboll Environment and Health (REH) group has a network of more than 2,100 environment, health, and water employees globally. REH is among the world's leading environmental and health consultancies, trusted by clients to understand and manage the impacts of their activities and products so that they can respond to business, regulatory, or legal challenges effectively and develop sound strategies for operating sustainably.

Eric C. Lu, Principal  
18100 Von Karman Avenue, Suite 600  
Irvine, CA 92612  
[elu@ramboll.com](mailto:elu@ramboll.com)

**Fehr & Peers** has specialized in providing transportation planning and engineering services to public and private sector clients since 1985. The firm develops creative, cost-effective, and results-oriented solutions to planning and design problems associated with all modes of transportation. Fehr & Peers takes a creative, data-driven approach to each of its practice areas: travel behavior and forecasting, multimodal operations and simulation, transit planning, bicycle and pedestrian planning, sustainable transportation, freight systems and airports, integrated land use and transportation plans, conceptual street and trail design, and transportation engineering and ITS design.

Thomas Gaul, Principal  
600 Wilshire Boulevard, Suite 1050

Los Angeles, CA 90017  
t.gaul@fehrrandpeers.com

**Nabih Youssef & Associates, Structural Engineers (NYA)** is an internationally recognized structural engineering firm providing specialized structural and earthquake engineering consulting for new and existing buildings. Established in 1989, the firm's design practice is geared towards architecturally complex building projects, including educational, residential/housing, restaurants, commercial, and public projects. NYA currently has over 40 practicing engineers and is based in Los Angeles with additional offices located in San Francisco and Irvine.

Ryan Wilkerson, Vice President  
550 South Hope Street, Suite 1700  
Los Angeles, CA 90071  
[rwilkerson@nyase.com](mailto:rwilkerson@nyase.com)

**Ek, Sunkin & Bai** Ek, is a full-service public affairs, strategic communications and government advocacy firm. The firm has successfully represented corporations, trade associations, non-profits and public agencies at the local, state, regional and federal levels including transportation-related matters. Ek, Sunkin & Bai has been retained to assist ARTT with services including stakeholder communication and community outreach.

Howard Sunkin  
Alice Walton  
300 South Grand Avenue, Suite 2750  
Los Angeles, CA 90071  
[howard@ek-sunkin.com](mailto:howard@ek-sunkin.com)  
[alice@ek-sunkin.com](mailto:alice@ek-sunkin.com)

## 10. Risk Summary

*Please provide a summary of key risks (business, legal, financial, technical, etc.), including any risks associated with assumptions, and how they will be mitigated, managed, or shared between partners.*

### **RESPONSE:**

General. A key risk to both public confidence and financial confidence in this Project relates to the ability to timely deliver the Project. Since the Project was submitted in April 2018, we are eager to proceed to understand the assistance Metro is willing to provide to ARTT LLC for the Project. The ART offers significant regional and local benefits.

Technical. ARTT LLC has reviewed a number of potential station locations and the resulting alignments for technical feasibility. ARTT LLC has proposed, in part, to partner with Metro to assist, as may be necessary, in the acquisition of needed surface land for stations and towers and/or aerial easements.

Financial. ARTT LLC will fund/finance, design, build, operate, and maintain the ART system. ARTT LLC has made preliminary assessments of the total Project costs and intends to periodically review the cost projections and to monitor the cost implications of major decisions to manage Project costs.

## II. Price/Cost Information, Revenue Impacts, and Cost-Sharing

*Proposed price or total estimated cost for the effort and/or the revenue generated in sufficient detail for meaningful evaluation and cost analysis, including an annual cash flow for the project and annual or future costs to operate and maintain. If any cost-or risk-sharing, or other innovative payment or pricing schemes are to be included, please explain them here.*

**RESPONSE:** The estimated costs for ART are \$125 million. ARTT LLC has proposed that the ART would be funded/financed, designed, built, operated, and maintained by ARTT LLC at no cost to Metro. This commitment is based on the direct route with two stations. ARTT LLC would be happy to coordinate any potential additional points of access (e.g., a station near Los Angeles Historic State Park) if other sources of non-Metro funding are available. ARTT LLC is deeply committed to this innovative project and fully capable of meeting all funding commitments.

As noted, ARTT LLC will operate the system privately and retain all revenue from the system operations. ARTT LLC acknowledges that it will reimburse Metro for its direct costs related to its work as Lead Agency for CEQA and any assistance provided for property acquisition and/or air rights easements. Depending on the ultimate site chosen for the station at Union Station, ARTT LLC may provide lease payments to Metro as part of a long-term lease agreement.

More detailed notes on assumed costs and revenues are provided below.

### **Capital Costs**

A direct route from Union Station to Dodger Stadium is anticipated to cost approximately \$125 million, as shown on the attached cost summary. Following completion of environmental review and permitting, ARTT LLC will secure third party financing for the full capital construction cost of the Project. Cost estimates were based on a direct alignment from Union Station to the Dodger Stadium property, a linear distance of approximately 1.2 miles. All cost estimates were developed by professionals based on estimates of quantities of materials necessary to construct land-affixed system components such as towers and stations and manufacture other system parts (e.g., tons of concrete/steel or linear length of the aerial system). Since the Project is currently in the conceptual design phase, this is an early estimate, which will be updated as design progresses.

Components of the mechanical system for the Project's 3S aerial transit system are highly custom and will be manufactured by the manufacturers of such systems outside of the Los Angeles region and installed by local contractors. Cost estimates for these components, which include ropeway, cabins, and the full mechanical system, were estimated based on costs for comparable, recently completed 3S systems in Europe. The 1.2-mile length of the system dictates the amount of ropeway and the maximum number of cabins. Estimates based on these systems were also adjusted for currency and economic inflation.

Cost estimates for stations were based on prototypical station designs developed by the technical team based on space requirements for aerial system components, required station height to accommodate gondola aerial clearance, structural loading, cabin storage, and other ancillary uses such as passenger queueing and ticketing.

Individual tower costs were estimated based on the quantities of materials required to construct towers to the necessary heights for gondola clearance. ART will meet and/or exceed all Code requirements applicable to the Project.

All labor cost estimates assumed fair market labor rates in the local Los Angeles market for construction.

Given expected construction cost growth in the near term, a 15 percent contingency was assumed. These costs have been validated against other system costs internationally and have been checked against similar recent proposals for domestic systems such as in Austin, Boston, New York, and Washington, DC.

### **Operating Costs**

Operational cost assumptions have not yet been developed for ART; however, based on performance of existing systems and estimates of future ridership and ART hours of operation, operating cost components include:

- **Labor:** Labor costs to operate the ART system are variable based on the number of operational days per year, the daily hours of operation, and the ridership. System staffing requirements include a general manager, other management staff, mechanics, operators, and attendants.
- **Energy:** Energy costs are estimated based on an assumption of the operation of an 800-horsepower motor during system operations.
- **Marketing:** ARTT LLC intends to market the ART system to encourage ridership.
- **Capital replacement reserve:** ART system revenues will contribute to an annual capital replacement reserve for the replacement of system components at varying intervals of time.

### **Anticipated Revenues**

ARTT LLC will generate revenue through passenger fares, advertising, and system sponsorship. While we have not yet established what the range of fares will be, categories of revenue anticipated by ARTT LLC, which were evaluated by the Project team to develop and validate a viable operating model, include:

*Passenger Fares – Dodger Stadium Event Attendees:* ARTT LLC envisions that a round trip ride on ART will cost less than the average parking costs at the stadium.

*Passenger Fares – Tourists:* During non-event times, tourists may be able to ride the ART system to take in scenic views of greater Los Angeles and to visit historic Dodger Stadium.

*Passenger Fares – Commuters and Park Visitors:* ART may facilitate daily commuter and other trips for residents and workers in northern Chinatown, Solano Canyon and at Dodger Stadium, with direct access to and from Union Station, as well as visitors to Elysian Park.

*Advertising:* In-cabin, on-cabin, and in-station advertising opportunities are a part of ARTT LLC's business model and may or may not be packaged with an overall system sponsorship agreement.

*Sponsorship:* With visibility from both the ground and as viewed by riders, the ART system provides a significant and valuable opportunity to potential sponsors and advertisers. Such a sponsorship is often packaged with advertising opportunities and can provide substantial upfront and operating capital to subsidize system operations.

Corporate sponsorships and advertising revenue can support annual operations and reduce the direct cost to passengers.

## **I2. Additional Information**

*Identify any other relevant project information.*

**RESPONSE:** N/A

## **PART III. BENEFITS AND PERFORMANCE**

### **I. Summary of Expected Benefits**

*Describe the desired/expected outcomes, positive results, benefits, efficiencies, and/or cost savings of implementing this project/program (in measurable terms if possible).*

**RESPONSE:** ARTT LLC anticipates that the implementation of ART will:

- Provide the funding/financing, design, construction, operation, and maintenance of the Project at no cost to Metro.
- Provide people attending Dodger games and events at the stadium with more opportunity to utilize Metro's transportation system via the region's transport hub at Los Angeles Union Station, specifically due to the capacity, speed, comfort and quality experience that ART will provide.
- Provide enhanced economic value to people attending games or events at Dodger Stadium due to the reduced cost of combining a Metro ride and an ART ride versus driving and parking at an event.
- Significantly increase the number of people entering and exiting Dodger Stadium via transit – up to 20 to 25% of overall attendance –due to ART's capacity to carry in excess of 5,000 people per hour per direction.
- Significantly reduce the number of cars entering and exiting Dodger Stadium – and congesting the routes through and adjacent to communities and neighborhoods. ARTT LLC anticipates between a 20 - 25% decrease in private automobiles at Dodger Stadium due to ART.
- Improved air quality in surrounding communities, which are neighborhoods already environmentally impacted as detailed in the metrics of CalEnviroScreen 3.0 (Office of Environmental Health Hazard Assessment). These neighborhoods are in close proximity to major freeways, the SR-110 and the US-101, as well as heavily congested arterials (Sunset Boulevard) that create both safety and air quality issues.
- Reduced congestion in and around Dodger Stadium, its adjacent neighborhoods and communities, and along major arterial and freeway routes, thereby reducing air quality impacts and greenhouse gas emissions.
- Enhanced safety within adjacent neighborhoods and communities due to a reduction in vehicles in the area.

ART will provide a range of benefits, including mobility and accessibility, air quality, economic and fiscal, and benefits to the surrounding communities. Each of these categories is described below.

#### **Mobility and Accessibility Benefits**

With the ART system based at the hub of the region's transportation system, transit riders from all over Southern California can have single transfer access to Dodger games and

other events at the stadium, via regional and commuter rail, light rail, bus, shuttle and pedestrian connections at Union Station. ART's unique design provides consistent capacity during peak periods, is reliable, and is ADA compliant and accessible. ART ridership would reduce the potential for transportation congestion and longer trips. ART will also provide riders with an enjoyable ride to their event.

As the ART system has a capacity of at least 5,000 people per hour per direction, at full capacity a minimum of 10,000 people could take the gondola to Dodger Stadium in the two hours prior to a game, which is currently when most Dodger fans arrive. Since the average attendance at a game is 46,000, the gondola could carry more than 20 percent of the fans to the stadium. That is roughly 3,200 cars that will not drive to the stadium and park, thus bringing a notable relief in congestion surrounding the stadium both before and after the games or events.

### **Air Quality and GHG Benefits**

ART is an eco-friendly transit option. ART will help the region maintain and achieve attainment of Federal and State air quality regulation standards. Regional air quality is governed by National Ambient Air Quality Standards (NAAQs) and California Ambient Air Quality Standards (CAAQs), both of which regulate pollutants considered harmful to public health and the environment [including for SO<sub>2</sub>, CO, NO<sub>2</sub>, O<sub>3</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, and Lead (Pb)]. The State of California CAAQs as additional standards, which are generally more restrictive than NAAQS.

ART will also contribute to regional and local efforts to better-integrate environmentally-conscious land use and transportation planning in order to reduce GHG emissions. California's Sustainable Communities and Climate Protection Act (SB 375) requires that all regional planning organizations include a Metropolitan Planning Organizations component in Regional Transportation Plans (TFP). The Sustainable Communities Strategy must achieve GHG emission reduction targets through the development of more compact, complete, and efficient communities.

The Project will contribute to SCAG's goals to reduce per capita transportation emissions by 8 percent by 2020, 18 percent by 2035, and by 21 percent by 2040 (all of which exceed the mandated reduction standards).

### **Economic and Fiscal Benefits**

The proposed \$125 million ART system will deliver economic benefits to the Los Angeles region both during construction and during operations. During construction, the Project will produce both direct and indirect jobs. "Direct" impacts include on-site construction jobs; "indirect" impacts are those resulting from construction contractor purchase of goods and services to support the Project. Most of the jobs created to build the Project will occur in the City and County of Los Angeles, with the exception of the gondola mechanism itself, which will be manufactured by the system manufacturer outside the Los Angeles region and then installed in Los Angeles.

The ART system will also produce long-term benefits to the regional economy through its on-going operation. This includes onsite employment of the operations and management team, as well as spin-off benefits of new economic activity likely to be located near the station areas and an increase in tourist activity.

## Community Benefits

ARTT LLC is committed to a project that benefits the neighbors of Dodger Stadium and Dodger fans across greater Los Angeles. The Project would be a pleasing addition to the community, with stations and aerial gondolas designed for aesthetic compatibility. Residents in neighboring areas (including Echo Park, Solano, Chinatown and Northeast Los Angeles) would benefit from a reduction in traffic congestion, air emissions, noise, and pollution. Both the reduction in the number of vehicles driving to the Dodger Stadium property and a reduction in the idling time of vehicles spent in local neighborhood areas will lead to a reduction in total air emissions.

Additionally, the Project could support expanded utilization of Elysian Park. The Los Angeles Dodgers have committed to working closely with the Project as transportation for Dodgers fans to games at Dodger Stadium and other events and venues. The Project will undergo a robust CEQA process and engage the community to ensure that it achieves shared objectives.

The ART system is well-aligned with Metro's objectives to provide more mobility choices for Los Angeles County residents. Metro is leading the transformation of Southern California from a car-dominated society toward a dynamic, sustainable transit-oriented region. As the Metro system continues to grow with the many transit projects included in Measures R and M, Union Station will be even more convenient for Dodger fans to visit the Stadium via rapid transit and the ART system, supporting increased growth for Metro's overall system ridership into the future. As an enjoyable experience for visitors, the ART system can also draw new tourists to and through Union Station, demonstrating the region's commitment to equitable transportation investment to the world.

The ease of attending games, events, and recreation through ART will encourage new "choice rider" trips and can catalyze more regular ridership. In addition to Union Station's linkages to 141 miles of subway, light rail and bus rapid transit, it is the hub of Metrolink's commuter train lines; all of these systems are used by Dodger fans. When ART is added to Metro's other system expansions, we anticipate increased transit utilization to Dodger Stadium, with more fans arriving at Union Station by transit and then connecting to the Stadium via the ART system. Many Dodger fans will learn more about Metro and could become regular riders, which would increase the likelihood they will use the Metro system for other trips.

## 2. Performance Assessment

*Please describe how these performance indicators and/or measures will be measured and assessed, including any quantitative measurement, sampling, interpolation/extrapolation, modeling, etc. as well as qualitative assessment.*

**RESPONSE:** Since ART will be privately owned and operated, ARTT LLC will evaluate the success of the system on internal criteria. These measures are likely to include ridership volume, revenue production, success with sponsorship and advertising, operational performance, and customer satisfaction.



### 3. Final Evaluation and Conclusions

*Please describe how the overall performance of the project or program will be evaluated, whether any conclusions or recommendation or further action/next steps will be generated, and if so, how.*

**RESPONSE:** The overall performance of the ART system will be evaluated annually, and improvements made as needed. Our goal is for the system to operate for the full useful life of the mechanical system and it will be replaced with a comparable system of the latest state of art at that time.

## PART IV. SUPPORTING INFORMATION

*To Be Completed by Applicant. Please identify the following.*

### 1. Contract Type

*Type of contract or negotiated agreement being sought (the final determination on type of contract shall be made by Metro, should Metro decide to proceed with a contract).*

**RESPONSE:** Please see the enclosed draft term sheet for an Exclusive Negotiation Agreement (ENA) for a services agreement that would be the contractual vehicle to address Metro role as the Lead Agency on the environmental review pursuant to CEQA and any assistance in the acquisition of surface land and/or aerial easements for the construction and operation of the ART. The ENA would also set forth the parameters for a potential ground lease by and between Metro and ARTT LLC should the siting of an ART station be located on Metro-owned property at or near Union Station.

### 2. Organizational Information and Qualifications

*Include a description of your organization, previous experience in the field, and facilities to be used.*

**RESPONSE:** See response to Part II, 9. ARTT LLC's team includes highly qualified experts that is committed to deliver the Project on an ambitious schedule. ARTT LLC plans to obtain third party private financing for the capital construction of the Project, as well as to privately operate and maintain the ART system. The Proposer is deeply committed to this innovative project and fully capable of meeting all funding commitments.

### 3. Conflicts of Interest and Environmental Impacts

*Please include or attach all required statements and disclosures, if applicable, about organizational conflicts of interest and environmental impacts.*

**RESPONSE:**

ARTT LLC Conflicts of Interest: ARTT LLC has not identified any organizational conflicts of interest.

Environmental Impacts: ARTT LLC anticipates that the operation of the ART will provide an overall net environmental benefit to the areas surrounding Dodger Stadium with regard to traffic, air quality, safety, and greenhouse gas emissions. The potential environmental impacts (and benefits) of the Project will be analyzed as part of the environmental review under CEQA.

### 4. Financial Resources

*Information, in the form of Metro's Pre-Qualification Application (see Exhibits D & E of the Unsolicited Proposal Policy) demonstrating to Metro that the proposer has the necessary financial resources to complete the project, as determined by Metro and OEI staff. Such information may include (i) financial statements, including an Auditor's Report Letter or an Accountant's Review Letter, Balance Sheets, Statements of Income and Stockholder's Equity, and a Statement of Change in Financial Position; (ii) un-audited balance sheets; (iii) names of banks or other financial institutions with which the proposer conducts business; and (iv) letter of credit commitments.*

**RESPONSE:** We note that Metro's Pre-Qualification Requirements are identified in the context of projects to be issued for public bids, while ART LLC has requested Metro to consider its request for a sole source determination. As described above, since no public funds are requested from Metro, and full reimbursement of services is proposed through a services agreement, we seek to proceed to an ENA as quickly as possible.

ARTT LLC has access to the necessary resources to fund and finance this Project including for the initial phases, such as the required next step of environmental review. Upon CEQA clearance and permitting progress, ARTT will also be able to proceed to additional investor engagement. Interest in the Project has been very strong, and demonstrated progress with Metro toward implementation is an important next step. As the Project advances through the approval process, ARTT LLC looks forward to discussing with Metro the additional evidence appropriate to demonstrate ARTT LLC's financial resources in connection with the Project.

## METRO'S ATTACHMENT B: APPLICABLE POLICIES AND LAWS WORKSHEET

This worksheet is not intended to be exhaustive, but to better understand which policies, laws and requirements the proposer plans to meet, and which the proposer believes do not apply or would not be overly burdensome/costly to meet.

Policy	Applicable?	Rationale
American with Disabilities Act (ADA)	Yes	--
Metro Adjacent Development Handbook & Adjacent Construction Design Manual	Yes	--
Metro Green Construction Policy	Yes	--
Construction Careers Policy	Yes	--
Project Labor Agreement (PLA)	Yes	--
American National Standards Institute (ANSI) B77.1-2017	Yes	This latest 2017 revision is not currently codified in California, rather an older version is the basis for California's passenger ropeway codes. ARTT LLC will work closely with Cal/OSHA's Amusement Ride and Tramway Unit regarding codes and standards compliance.
Metro Equity Platform Framework	Yes	--
LAUS Agreements (CC&Rs)	Yes	--
Crossing of State Route 110 (SR-110)	Yes	--
National Fire Protection Association (NFPA) 130 Standard for Fixed Guideway Transit and Passenger Rail Systems	N/A	Not applicable to ropeways; it is intended primarily for fixed guideway and rail systems.
NFPA 101 Life Safety Code	Partial	Intended for buildings; as applicable, could be applicable to stations.
NFPA 70 National Electric Code	Yes	ANSI B77.1 (2.2.1.1.) specifically requires that electrical systems of passenger ropeways comply with ANSI/NFPA 70-2017 (and IEEE C2-2017 National Electrical Safety Code).
NFPA 72 National Fire Alarm Code	Partial	As applicable, could be applicable to stations.
Los Angeles Fire Department (LAFD) Chief's Regulation #4 Standards	Yes	We understand this to be a regulation for the testing and repair of fire protection equipment. As applicable, the station would comply. We would not expect it to be strictly applicable to cabins, although the fire/life safety devices located in cabins may be tested and repaired in accordance therewith.
Long Beach Fire Department (LBFD) Fire Protection and Life Safety Certification Program	No	We understand this to be a program modeled after Chief's Regulation #4 (above), as modified by the Long Beach Fire Department, and therefore not applicable.
Metro Fire/Life Safety Design Criteria	No	This document contains specific requirements for fire protection on fixed guideway transit systems. Transportation systems not included in the definition of fixed guideway transit systems are specifically excluded from its scope (1.1.2 C).

# ART Capitalized Project Cost Estimate

<b>Aerial System Procurement &amp; Installation</b>	
Mechanical System, Including Ropeway and Cabins <sup>1</sup>	\$30,000,000
Urban Installation Premium (5%) <sup>2</sup>	1,500,000
<b>Aerial Systems Procurement &amp; Installation Subtotal</b>	<b>\$31,500,000</b>
<b>Stations &amp; Towers Construction</b>	
Dodger Stadium Property Station	\$10,500,000
Union Station	10,500,000
Stations Design Premium (30%) <sup>3</sup>	6,500,000
<b>Station Subtotal</b>	<b>\$27,500,000</b>
Towers (Total Cost) <sup>4</sup>	\$7,500,000
Towers Design Premium (50%) <sup>5</sup>	4,000,000
<b>Tower Subtotal</b>	<b>\$11,500,000</b>
<b>Project Labor Agreement (1.0% of Station/Towers/Sys Inst.)</b>	<b>4,000,000</b>
<b>Stations &amp; Towers Construction Subtotal</b>	<b>\$43,000,000</b>
<b>Acquisition Costs</b>	
Dodger Stadium Property Land Cost	TBD
Union Station Ground Lease (Capitalized)	TBD
Tower Land Costs <sup>6</sup>	1,750,000
Aerial Easements and Other Land Costs <sup>7</sup>	11,975,000
<b>Acquisition Costs Subtotal</b>	<b>\$13,725,000</b>
<b>Soft Costs</b>	
Project Administration	\$3,700,000
Legal	7,000,000
Public Relations	1,750,000
Metro Unsolicited Proposal Process (through MOU)	1,280,000
Advance Engineering (10% Engineering)	600,000
CEQA Clearance	3,270,000
Work to System Bid Documents (30% Engineering)	2,425,000
Procurement	430,000
ROW & Aerial Easement Acquisition Fees	800,000
Permits & Entitlements	900,000
Community Benefits & Other Costs	5,000,000
<b>Soft Costs Subtotal</b>	<b>\$27,155,000</b>
<b>Other Costs</b>	
Contingency / Escalation (15% of Tot. Costs excl. Soft Costs)	\$13,000,000
CR Site Improvements	TBD
<b>Other Costs Subtotal</b>	<b>\$13,000,000</b>
<b>Preliminary Conceptual Cost Estimate</b>	<b>\$128,380,000</b>

## FOOTNOTES

1. Based on comparable recent systems, including Penkenbahn and Eisgratbahn in Austria. Adjusted for currency and economic inflation. Estimated costs include the design, purchase and installation of the aerial system
2. Premium TBD. Currently: Marshall & Swift cost estimator (2018). Cost premium compares construction cost indices in Los Angeles, CA with Vail, CO. Assumes 30k GSF per station
3. Design premium includes HVAC and cosmetic improvements beyond basic package
4. Costs TBD. Current assumption is \$2.5 to \$5 million per tower; potential variance driven by cladding, seismic compliance, and US manufacturing premium vs. Europe.
5. Design premium based on team experience.
6. Agreements to locate towers on public land would likely take the form of a ground lease, but are conservatively included here at fair market value of \$250-\$350 psf for a 60'x60' or 80'x 80' parcel.
7. Private aerial easement costs assumed to be \$50 psf, or roughly 25% of land fair market value, upon purchase from private sellers.

## DRAFT TERM SHEET FOR AN EXCLUSIVE NEGOTIATION AGREEMENT

Parties	Los Angeles Aerial Rapid Transit LLC (“ARTT LLC”) and Los Angeles County Metropolitan Transportation Authority (“Metro”), each a “Party” and collectively the “Parties”
ART   Project	ARTT LLC submitted an Unsolicited Proposal with the Office of Extraordinary Innovation proposing an aerial rapid transit gondola system connecting Los Angeles Union Station (“LAUS”) and the Dodger Stadium property (“ART” or the “Project”). ARTT LLC will finance, design, build, operate, maintain, and insure the Project.
Proposed Timing	ARTT LLC requests that a Term Sheet for Exclusive Negotiation Agreement (“ENA”) be approved by October 25, 2018.
Sole Source	Metro has determined to approve the selection, on a sole source basis, of ARTT LLC for the purpose of analyzing and executing the terms and conditions of the ENA concerning the ART and for the purpose of analyzing the Project and allowing planning activities that will include a potential Services Agreement.
Negotiate Exclusively; Good Faith Negotiations	Metro and ARTT LLC desire to negotiate exclusively and in good faith concerning the Project Agreements.
Services Agreement	Metro and ARTT LLC shall work in good faith to negotiate and jointly prepare a Services Agreement that shall include, as an initial matter, provisions relating to (1) Metro’s role as the Lead Agency under CEQA and related matters; (2) a schedule of performance; (3) compensation for Metro as to reimbursement of its services for the Project; (4) consideration of ART station location in proximity to LAUS; and (5) other matters as agreed by the Parties.
Metro Obligations	CEQA. Metro has agreed to a role as the Lead Agency under CEQA.
	Property Acquisition. Metro has agreed to assist with acquisition of property and aerial easements, as necessary, for the Project pursuant to its powers under CPUC Section 30600.
	Funding Obligation. Metro has not agreed to fund, subsidize, or otherwise financially contribute in any manner toward the Project.
	Metro Discretion. Metro is not approving, committing to, or agreeing to undertake: (1) the Project or any development; (2) lease of land to ARTT LLC; or (3) any other acts or activities requiring the subsequent independent exercise of discretion by Metro.
ARTT LLC Responsibilities	Project Information. ARTT LLC shall meet with Metro and provide information and documents concerning the Project.
ARTT LLC Responsibilities (cont.)	Environmental Costs. ARTT LLC shall cover the costs associated with the preparation and certification of any required environmental documents including an EIR

## ATTACHMENTS

### DRAFT TERM SHEET FOR AN EXCLUSIVE NEGOTIATION AGREEMENT

	<p>under CEQA. ARTT LLC shall arrange and pay for all required CEQA studies and reviews at its sole costs and expense. Metro shall exercise its own independent judgment in the review and certification of any environmental documents prepared in connection with Metro's consideration of the Project.</p> <p>Outreach. Metro and ARTT LLC shall determine the appropriate procedure for responding and handling questions from the public and local residents regarding the Project.</p>
Confidentiality	<p>The Parties anticipate that during the Term each may disclose and provide to the other certain proprietary and confidential information. Unless otherwise required by law, neither Party shall disclose such proprietary and confidential information.</p>
Deposit	<p>On or before the Effective Date of the ENA, ARTT LLC shall submit to Metro a good faith deposit ("Deposit") in the amount of \$50,000 as an initial payment towards Metro's reasonable actual costs related to CEQA compliance.</p>
Term	<p>The ENA shall commence upon the Effective Date and shall terminate six (6) months after the Effective Date. The Parties may extend the Term for additional periods upon mutual agreement of the Parties.</p>

**EXHIBIT E**





**Metro**

Los Angeles County  
Metropolitan Transportation Authority

One Gateway Plaza,  
Los Angeles, CA 90012-2952

**Phillip A. Washington**  
*Chief Executive Officer*  
213.922.7555 Tel  
213.922.7447 Fax  
washingtonp@metro.net

October 11, 2018

Ms. Martha Welborne  
Project Director  
Aerial Rapid Transit Technologies, LLC  
700 S. Flower Street, Suite 2995  
Los Angeles, CA 90012  
Martha.Welborne@aerialrapidtransit.la

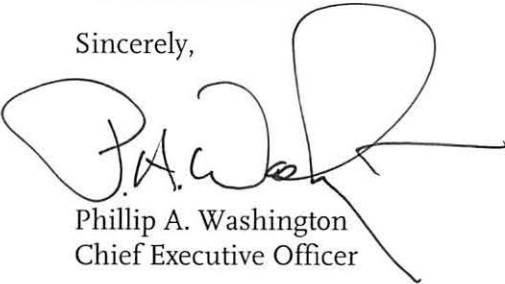
Subject: Response to Request for Determination of Sole Source  
Aerial Rapid Transit Technologies, LLC Unsolicited Proposal (UP-2018-14)

*Martha*  
Dear Ms. Welborne,

The Los Angeles County Metropolitan Transportation Authority (Metro) has met internally to discuss the requests in Aerial Rapid Transit Technologies LLC's Phase II Response and letter dated September 24, 2018 to reach a determination on whether a sole source approach is appropriate for this project. Metro would like to inform you that we have reached a decision ahead of schedule that the project meets Metro's criteria for a sole source. Metro is prepared to enter into exclusive negotiations on project terms with your team.

Please reach out to us within the next 30 days to schedule a meeting with your team to begin discussions. Please coordinate with my Executive Secretary, Maritza Romero at [RomeroM@metro.net](mailto:RomeroM@metro.net) or 213-922-7599 and Nolan Borgman, Office of Extraordinary Innovation, at [BorgmanN@metro.net](mailto:BorgmanN@metro.net) or 213-922-4117.

Sincerely,



Phillip A. Washington  
Chief Executive Officer

cc: Debra Avila  
Carolina Coppolo  
Joshua Schank  
Maritza Romero  
Nolan Borgman

# **EXHIBIT F**

MEMORANDUM OF AGREEMENT  
BETWEEN  
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY AND  
AERIAL RAPID TRANSIT TECHNOLOGIES LLC

This Memorandum of Agreement (“**MOA**”) is made and entered into as of April 26, 2019 (“**Effective Date**”) by and between Aerial Rapid Transit Technologies LLC, a Delaware limited liability corporation (“**ARTT LLC**”), and the Los Angeles County Metropolitan Transportation Authority (“**Metro**”), a California county transportation authority existing under the authority of Sections 130050.2 et seq. of the California Public Utilities Code (“**PUC**”), each individually a “**Party**” and collectively the “**Parties**”.

RECITALS

A. ARTT LLC proposed a unique, innovative partnership with Metro in its Phase I Unsolicited Proposal submitted on April 25, 2018, to fund/finance, design, construct, operate, and maintain the Los Angeles Aerial Rapid Transit gondola connecting Union Station and the Dodger Stadium property (“**ART**” or “**Project**”). On June 11, 2018, Metro determined to pursue Phase II of ARTT’s Unsolicited Proposal for the ART. Metro provided ARTT LLC a “Request for Information” on August 10, 2018. ARTT LLC submitted a Response to the Request for Information on September 26, 2018. On October 11, 2018, Metro notified ARTT LLC that Metro had made a sole source determination and would begin exclusive negotiations with ARTT LLC for the Project. Metro and ARTT LLC executed a Letter of Intent dated October 31, 2018, establishing exclusive negotiations on the Project and establishing the commitment of both Metro and ARTT LLC to engage in good faith, timely negotiations. On December 14, 2018, Metro formally concluded the Unsolicited Proposal process and began exclusive negotiations.

B. Metro and ARTT LLC desire to negotiate the implementation of the Project.

C. The Parties will collaborate to prepare, process, and complete environmental clearance for the Project pursuant to the California Environmental Quality Act (“**CEQA**”), the location of an ART station in proximity to Los Angeles Union Station (“**LAUS**”) (“**ART LAUS Station**”), additional terms necessary for the construction and operations of the ART and on other public review and hearing processes and subject to all applicable governmental approvals. The Parties understand the Project will also require the cooperation of and approvals from the City of Los Angeles, the State of California, and possibly other governmental agencies.

D. Pursuant to PUC Section 130252, ARTT LLC will submit its proposed plans for the design, construction, and implementation of the Project to Metro. As used in PUC Section 130252, plans means the project description and not the detailed project plans, specifications, and estimates. ARTT LLC acknowledges that Metro’s written approvals and permission are required to operate the Project, with such approvals and permission contingent on the Parties reaching agreement concerning various conditions, including but not limited to the short and long term operation and maintenance of the Project (“**Transaction Documents**”). Metro has therefore determined that Metro will be the Lead Agency under CEQA in connection with the consideration and analysis of the environmental impacts of the Project.

E. The Parties desire to negotiate regarding the ART LAUS Station, including its location, access, and design ("**ART LAUS Station Transaction**").

F. Because Metro has not completed a CEQA review, this MOA does not constitute or evidence an approval by Metro of, or commitment of Metro to, any action for which prior environmental review is required under CEQA. Metro retains the absolute sole discretion to make decisions under CEQA, which discretion includes, without limitation (i) deciding not to proceed with the Project (known as the "no build" alternative) and (ii) deciding to approve the Project and /or any of the agreements contemplated in this MOA (the "**Potential Metro Actions**"). There shall be no approval or commitment by Metro regarding the development of the Project or any of the agreements contemplated in this MOA, unless and until Metro, as the Lead Agency, and based upon information resulting from the CEQA environmental review process, considers the impacts of the Project.

In consideration of, and subject to, the above Recitals, the Parties hereby agree as follows:

#### AGREEMENT

1. Agreement to Negotiate Exclusively: Good Faith Negotiations.

A. Exclusive Negotiations. During the Term, as defined below, and so long as ARTT LLC is negotiating in good faith and is not otherwise in default of its obligations under this MOA, Metro will not solicit offers of proposals from other parties concerning the Project. The Parties will negotiate exclusively and in good faith in accordance with this MOA regarding the terms of the Project and the ART LAUS Station.

B. Essential Terms. The Parties acknowledge that the Project and this MOA do not establish all the essential terms of the agreement between the Parties related to the Project, and that although they have set forth herein a framework for negotiation of the essential terms of the Project: (i) they have not set forth herein nor agreed upon the essential terms of the Transaction Documents or ART LAUS Station Transaction, including, among other things, CEQA implementation oversight, fare integration, Union Station parking, Union Station security, data sharing, and other considerations or terms of and timing of the Project or any associated development; (ii) they do not intend this MOA to be a statement of the essential terms of the Transaction Documents or ART LAUS Station Transaction; and (iii) the essential terms of the Transaction Documents and ART LAUS Station Transaction, if agreed to by the Parties, shall be set forth, if at all, in the documentation negotiated, approved and executed by authorized representatives of each of the Parties after all required CEQA reviews have been conducted and determinations made.

2. Term and Termination.

A. Term. This MOA shall commence upon the Effective Date and shall terminate the later of twenty-four (24) months from the Effective Date or Metro's completion of its CEQA review and finalization and execution of the Transaction Documents and ART LAUS Station Transaction.

B. Right to Terminate. If either Party determines that a successful consummation of the negotiations is not likely or that the Project is not feasible, it may terminate this MOA upon ten (10) days written notice to the other Party, which notice period shall be subject to extension as provided in the immediately following sentence. Notwithstanding the foregoing, if either Party provides written notice to the other Party to terminate, the Parties agree that on the request of either Party (which must be made in writing within the initial 10-day notice period provided for in the preceding sentence), they will conduct a 60-day meet and confer period to discuss the conditions under which the negotiations likely could be successfully consummated or (as applicable) the Project could be feasible, and if the Parties are able within such 60 day period to agree to a path on which they believe the consummation of negotiations is likely to be successful or (as applicable) terms on which the Project could be feasible, the termination notice shall be deemed withdrawn and such withdrawal and the agreed terms shall be expressly agreed to in writing between the Parties. Upon termination of this MOA, any rights or interest that ARTT LLC may have hereunder shall cease. Unless agreed to by ARTT LLC, Metro will not have the right to develop on their own the Project; however, nothing herein precludes Metro from development of other gondola or aerial rapid transit projects that do not follow substantially the same routes as (and are otherwise not substantially similar to) the Project. Metro will not have the right to utilize plans, specifications, estimates, or any other documents developed by ARTT LLC for the Project. Any architect design plans submitted as part of the Project or as part of the assessment or consideration process shall remain the personal property of ARTT LLC, and Metro shall return all such plans to ARTT LLC within thirty (30) days after termination of the MOA. Metro may, however, retain and use copies of any engineering and non-design architect technical reports covering the physical condition of the ART station and tower locations, such as soils reports, contamination reports, subsurface engineering reports, and geotechnical reports.

C. Execution. No agreement or documentation that may hereafter be negotiated between the Parties shall become final and binding unless and until (i) Metro has complied with all applicable requirements of CEQA pertaining to the Project; and (ii) such documentation is executed by the authorized representatives of each of the Parties.

D. Approval of the Potential Metro Actions. Prior to the satisfaction of the terms set forth in Section 2.C, no (i) negotiation or preparation of any Project documentation, including without limitation, any specific terms and provisions or any form of document, (ii) review or approval by Metro of various stages of proposed plans and specifications for the Project; or (iii) cooperation or participation by Metro in development applications or submittals for the Project, shall constitute Metro's approval of or commitment to take any of the Potential Metro Actions.

3. Deposit.

A. Prior to and as a condition precedent to the execution of this MOA by Metro, ARTT LLC shall submit to Metro a good faith deposit ("**Initial Deposit**") in the amount of One Hundred Thousand Dollars (\$100,000.00) in the form of cash, wire transfer, or certified check to cover Metro's reasonable actual costs related to consideration of the Project and negotiation of the ART LAUS Station Transaction, Transaction Documents, and other related agreements ("**Metro Transaction Expenses**"). The Metro Transaction Expenses shall include, without limitation, the fully burdened labor rates (inclusive of wages, benefits, and overhead), as calculated by Metro, of in-house staff time and third party consultation fees, charged to perform environmental review,

community outreach, financial analysis, negotiations, appraisals, legal review, and appropriate services, and other Metro administrative costs expended in the evaluation, participation and approval of the Project. Metro shall provide monthly statements to ARTT LLC indicating the amount of costs that have been occurred against the Initial Deposit. The monthly statements shall identify the Metro staff and/or third party consultant incurring costs and a general identification of the tasks (e.g., environmental review, community outreach, Union Station property management, and steering committee meetings ) When the costs incurred reach 75% of the Initial Deposit, ARTT LLC shall submit an additional One Hundred Thousand Dollars (\$100,000.00) ("Additional Deposit") to Metro. Each time that the costs incurred reach 75% of the Additional Deposit, another Additional Deposit of One Hundred Thousand Dollars (\$100,000.00) will be submitted to Metro by ARTT LLC. If ARTT LLC does not consent to make such Additional Deposits, Metro may decline to provide the services and may terminate this MOA. In no event shall ARTT LLC be obligated to pay any Metro Transaction Expenses in excess of the Initial Deposit or the Additional Deposit amount without the prior written consent of ARTT LLC. In the event that this MOA terminates or is terminated as provided in Section 2, any Initial Deposit or Additional Deposit will become non-refundable to the extent necessary to pay Metro Transaction Expenses incurred or contractually committed to be paid as of the date of termination, and Metro shall return to ARTT LLC any portion of the Initial Deposit or Additional Deposit that is not needed to pay such Metro Transaction Expenses. The Parties agree that Metro (a) has no obligation to pay interest on the Deposit to ARTT LLC, and (b) is not required to place the Deposit in an interest bearing account. Interest, if any, earned on the Deposit may remain in the Deposit account and may be added to the amount of the Deposit.

B. Estimated Budget. Prior to the execution of this MOA by ARTT LLC, Metro shall provide ARTT LLC with an estimated budget for in-house staff time and third party consultation fees anticipated in be charged to perform environmental review, community outreach, Union Station property management, steering committee meetings , and other Metro administrative costs expended in the evaluation, participation and approval of the Project. ARTT LLC acknowledges that the estimated budget is an approximation based on Metro's current understanding of the Project and anticipated workload. Metro shall notify ARTT LLC when total incurred and paid costs have reached 75% of the total estimated budget and whether any revision to the original, estimated budget is needed. If additional Metro services are needed beyond the original budget, Metro shall provide ARTT LLC with a revised budget estimate.

4. Agreements to be Negotiated.

Metro and ARTT LLC shall work in good faith to negotiate and jointly prepare any Project agreements, including to memorialize the Transaction Documents and ART LAUS Station Transaction, during the term of this MOA. Any agreements shall be negotiated in accordance with applicable Metro policies and procedures.

5. Metro Obligations.

A. Funding Obligation. Metro has not agreed to fund, subsidize or otherwise financially contribute in any manner toward the development of the Project.

B. ART LAUS Station. Metro has agreed that ARTT LLC may study the potential ART LAUS Station as part of the CEQA review of the Project.

C. Metro Discretion. Metro is not approving, committing to, or agreeing to undertake: (i) the Project or any development; (ii) disposition, sale, or lease of land to the ARTT LLC; or (iii) any other acts or activities requiring the subsequent independent exercise of discretion by Metro.

6. ARTT LLC's Responsibilities.

Without limiting any other provision of this MOA, during the Term, ARTT LLC, at its sole cost and expense, shall prepare and submit the following information and documents and perform the following acts, all in furtherance of the negotiation process.

A. Project Information. Metro, the City of Los Angeles, the State, and all agencies having regulatory jurisdiction, will require certain planning and approval for the Project. ARTT LLC shall meet with representatives of Metro to review and come to a clear understanding of the planning and design requirements of Metro and other agencies for the Project. Within one (1) year after the Effective Date, ARTT LLC shall submit to Metro the following information:

i. Evidence reasonably satisfactory to Metro that ARTT LLC has the resources and financial capability to develop the Project;

ii. Project station design concept plans to be implemented at or above the LEED-Silver construction standard or its equivalent, including a site plan and sections as necessary to describe the proposed scope;

iii. Project development schedule by phase including milestones for site control, if needed, design, environment/land use entitlements, construction and completion;

iv. A funding and financing plan for the Project that shall include: source, availability and estimated amounts of a) equity capital, and b) construction and long-term financing;

v. A description of land use entitlements that may be needed to develop the Project and a proposed schedule for obtaining such entitlements including all actions required to process and obtain such entitlements; and

vi. A development pro forma for the Project in sufficient detail to allow Metro to evaluate the economic feasibility of the Project, including, without limitation, a statement of the overall estimated costs of construction, an estimate of income to be derived from the Project, and Project operating costs and debt service ("**Development Pro Forma**");

B. Project Progress Information. ARTT LLC shall provide reasonable prior notice, to the extent reasonably possible to provide such notice, to Metro of any substantive Project planning meetings with governmental offices (including staff) relating to the Project and allow Metro to attend such meetings at Metro's sole discretion and ARTT LLC's sole expense. ARTT LLC shall keep Metro fully informed during the Term regarding all substantive matters affecting the Project about which ARTT LLC has or acquires knowledge;

C. Environmental Documents. The ARTT LLC shall bear all costs associated with the preparation and certification of any required environmental documents including an Environmental Impact Report in compliance with CEQA ("Environmental Documents"). Metro will be the Lead Agency in connection with any required environmental reviews or determinations required by CEQA. ARTT LLC shall arrange and pay for all required Environmental Documents at its sole cost and expense, including but not limited to Metro's cost of defending and indemnifying any associated legal challenge to the Environmental Documents. ARTT LLC shall provide Metro with copies of the scopes of work for all Environmental Documents prior to the work commencing. Exhibit A includes additional detail as to the Parties roles and responsibilities for preparation and certification of the Environmental Documents. Exhibit B includes a schedule for the environmental review process. The Parties agree to use good faith and their best efforts to make substantial progress towards meeting the schedule, however, nothing in the schedule modifies the Term of this MOA. Metro shall exercise its own independent judgment in the review and certification of any environmental documents prepared in connection with Metro's consideration of the Project. The Parties agree that the Environmental Documents shall take into consideration Metro's equity platform.

D. Community Outreach. The ARTT LLC shall have responsibility for, and bear all the costs associated with community outreach and public coordination. ARTT LLC will prepare a communication plan for review and approval by Metro and will provide Metro with all public communications, statements, press releases, literature, etc. related to the Project. The Parties agree that the community outreach plan shall be consistent with Metro's equity platform. ARTT LLC acknowledges that any use of the Metro logo will require written approval from Metro.

E. Further Information. Metro reserves the right at any time to request from ARTT LLC, and ARTT LLC shall provide in a timely manner, additional or updated information about ARTT LLC and/or the Project.

7. Inspections.

During the Term, ARTT LLC may conduct such inspections, tests, surveys, and other analyses ("**Inspections**") as ARTT LLC deems reasonably necessary to determine the feasibility of designing, constructing, leasing, and financing the Project and shall complete such Inspections as promptly as reasonably possible within the Term as set forth herein. Any entry onto the ART LAUS Station location, to the extent it is on property owned by Metro ("**Metro Property**"), by ARTT LLC or its employees, agents, contractors, successors and assigns, shall be in accordance with Metro's property management policies. ARTT LLC shall coordinate and schedule the time(s) of its entry onto the Metro Property to meet Metro's requirements. ARTT LLC's and its contractors' access to the Metro Property shall not interfere, conflict with or impair transit operations or other activities on the Metro Property as set forth in a Right of Entry.

8. Plans, Reports, Studies, and Entitlements.

A. Metro Information. Metro, in its sole discretion, may make available to ARTT LLC upon ARTT LLC's written request, existing information and plans held by Metro and needed for the development of the Project on or adjacent to the Metro Property, provided that ARTT LLC and any person with access to such information and plans must execute a non-disclosure agreement



and follow Metro's confidentiality and use limitations set forth in such agreement. ARTT LLC agrees to conform to and abide by such confidentiality and use limitations as set forth in Metro's then current standard non-disclosure agreement.

B. Provision of Plans. All plans, reports, studies (including zoning and development entitlement applications, environmental documents, and reports filed in connection therewith), and investigation reports with respect to the Metro Property and the Project (collectively, "Plans") shall be prepared at ARTT LLC's sole cost and expense. ARTT LLC shall provide to Metro or the requesting agency, subject to the confidentiality provisions in Section 16, without cost or expense to Metro or the regulatory agency, copies of all Plans prepared by or on behalf of ARTT LLC. ARTT LLC shall include in its contractors' and consultants' contracts the right to assign the Plans to Metro. Documents prepared for ARTT LLC's confidential use and not released to third parties other than ARTT LLC's attorneys and confidential advisors shall not be considered Plans for these purposes.

C. Entitlements. Metro understands ARTT LLC may desire to procure the necessary entitlements for the Project; provided, however, ARTT LLC shall not seek or obtain any entitlements that encumber Metro's fee interest in the Metro Property without Metro's prior written consent. ARTT LLC shall include Metro in all substantive Project planning meetings, correspondence and other communications regarding the Project with the applicable public agencies and provide Metro with copies of all proposed and final filings, submittals and correspondence relating to any zoning or entitlement applications for Metro review and approval. ARTT LLC shall provide the proposed filings and applications at least fifteen (15) business days before ARTT LLC intends to submit such filing or application. ARTT LLC shall not apply for any zoning or entitlement changes to the Metro Property without Metro's prior written consent, which consent shall be provided in Metro's sole and absolute discretion. The obligations contained in this Section 8C shall survive termination of this MOA.

9. Indemnity and Insurance.

A. Indemnity. ARTT LLC shall indemnify, defend (with counsel approved by Metro) and hold harmless Metro and its subsidiaries and their respective representatives, employees, officials, directors, attorneys, consultants, successors and assigns (collectively, "Indemnitees") from any liability, claims, losses, costs, expenses or damages (including, without limitation, reasonable attorneys' fees and costs) (collectively, "Claims") in any way arising out of acts taken pursuant to this MOA or omissions to act related to: (i) damage to property or bodily injury or death of any person; (ii) any entry upon the Metro Property by ARTT LLC, its agents, employees and contractors; (iii) any Inspection made by ARTT LLC, its agents, employees and contractors; or (iv) the planning and preparation of, or challenge to any report or Plans (including the cost of such reports or Plans), except to the extent such Claims arise solely from the gross negligence or willful misconduct of Metro, its agents, employees or contractors. The indemnities provided by ARTT LLC in favor of Metro and the Indemnitees in this MOA shall not require payment as a condition precedent and shall survive the termination, expiration or revocation of this MOA.

B. Insurance. Prior to work commencing under this MOA, ARTT LLC shall have in place the insurance required in Exhibit C, except for professional liability insurance. The Parties agree that ARTT LLC shall cause to maintain the professional liability insurance by requiring the

EIR preparer and technical consultants to obtain and maintain the professional liability insurance policy and coverage.

10. Failure to Reach Agreement.

A. Failure to Reach Agreement. This MOA is an agreement to enter into exclusive negotiations. Each Party expressly reserves the right to decline to enter into any other agreement if the Parties fail to agree to terms satisfactory to both Parties after a good faith effort by the Parties to reach an agreement on the Project or the ART LAUS Station Transaction. Except as expressly provided in this MOA, neither Party shall have any obligation, duty or liability hereunder in the event the Parties fail to timely agree upon and enter into any other agreement.

B. Failure of Conditions. The Parties recognize that one or more of the conditions to ARTT LLC's proposal set forth herein may fail to be met as a result of subsequent studies, reviews and proceedings including the exercise of discretion by Metro or any public agency having regulatory jurisdiction in approving or disapproving the Project or the ART LAUS Station Transaction.

11. Broker's Fees.

The Parties represent and warrant to each other that no broker or finder has been engaged by it or is in any way connected with the ART LAUS Station Transaction contemplated by this MOA on its behalf. Metro shall indemnify, defend and hold harmless ARTT LLC from any claim for broker or finder fees based on actions of Metro, or that are claimed through the actions of Metro, and ARTT LLC shall indemnify, defend and hold harmless Metro and the Indemnitees from any claim for broker or finder fees based on the actions of ARTT LLC, or that are claimed through actions of ARTT LLC.

12. Non-Liability of Metro Officials and Employees.

Without limiting the provisions set forth herein, no member, official, representative, director, attorney, consultant or employee of Metro shall be personally liable to ARTT LLC or any successor in interest, in the event of any default or breach by Metro of any obligations under the terms of this MOA, or for any amount which may become due to ARTT LLC or to its successor under the terms of this MOA.

13. No Assignment.

A. No Assignment. No assignment of this MOA is permitted without Metro's prior written consent, which consent shall not be unreasonably withheld. "Assignment" means: (i) any direct or indirect gift, sale, conveyance, assignment, sublease, hypothecation, encumbrance, or other transfer of all or any part of ARTT LLC's interest in or rights under this MOA or any part of its interest in or rights to the Project; or (ii) any grant of control over the Project, this MOA or any interest, right, or privilege herein, including the right to manage or otherwise operate the Project under the Transaction Documents.

B. Transfer of Interests in ARTT LLC. Shareholders, partners, members, or other equity holders of ARTT LLC may transfer, sell, exchange, assign or divest themselves of any

interest they may have, so long as any sale, transfer exchange, assignment or divestment is not effected in such a way as to give majority control of ARTT LLC to any person(s), corporation, partnership or legal entity other than the majority controlling interest in ARTT LLC at the time of the Metro Board's authorization to enter into this MOA. Notwithstanding the foregoing, ARTT LLC may transfer, sell, exchange, assign or divest themselves of any interest they may have in such a way as to give majority control of ARTT LLC to any person(s), corporation, partnership or legal entity other than the majority controlling interest in ARTT LLC at the time of the Metro Board's authorization to enter into this MOA with Metro's prior written consent, which consent shall not be unreasonably withheld.

14. Entire Agreement. Attorneys' Fees.

This MOA is the entire agreement of the Parties with respect to the matters set forth herein, and may not be amended except in writing signed by all of the Parties. If any Party brings an action or files a proceeding against the other Party as a consequence of any asserted breach by the other Party, the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and costs paid by the losing Party.

15. Covenant Against Discrimination.

ARTT LLC shall not discriminate against, nor segregate, in employment or the development, construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of all or portions of the Metro Property and the Project, nor deny the benefits of or exclude from participation in, the Project and all activities of ARTT LLC in connection with the Metro Property and the Project, any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, sex, sexual preference/orientation, gender, gender identity, gender expression, military and veteran status, genetic information, marital status, age (40 and over), physical disability (including HIV and AIDS, acquired or perceived), mental disability, medical condition (including cancer), retaliation for having filed a discrimination complaint, or any other basis protected by federal or state statutes.

16. Confidentiality.

A. Proprietary Documents. The Parties anticipate that during the Term each shall from time to time disclose and provide to the other certain proprietary reports, correspondence and other information related to the Project, including without limitation, the development pro forma worksheet. Unless otherwise required by law, no Party shall disclose (except to its own and to the other Party's employees, officers, directors, agents, advisors, existing and prospective lenders, partners, accountants, investors, counsel and consultants) information regarding or related to the Project which is not already public and which has been delivered to such Party pursuant to the terms hereof.

B. Public Disclosure. Notwithstanding the foregoing Section 16.A, ARTT LLC acknowledges and agrees that Metro, as a government agency, (i) is subject to broad disclosure obligations under applicable law, including the California Public Records Act, and (ii) holds board of directors meetings which are open to the public and at which information concerning the Project may be disclosed including reports to the Metro Board describing the Proposal and the Project,

and including any documents to be approved by the Metro Board. Nothing in this MOA shall prohibit any disclosure required by law.

C. Protection of Confidential Documents. Any written document marked "CONFIDENTIAL AND RESTRICTED DISCLOSURE UNDER SECTION 16 OF THE MEMORANDUM AGREEMENT" in capital letters ("**Confidential Mark**") shall be deemed to provide all recipients thereof with actual knowledge that ARTT LLC deems such document to be confidential and proprietary pursuant to this Section 16 and the Public Records Act. If Metro receives a request under the Public Records Act concerning the disclosure of any document with a Confidential Mark, Metro shall provide notice to ARTT LLC of such request. If required by law, Metro shall disclose such document with a Confidential Mark pursuant to applicable law, unless ordered otherwise by a court. If ARTT LLC does not want such document with a Confidential Mark to be disclosed, ARTT LLC, at its sole cost and expense, may prosecute or defend any action concerning such document and shall indemnify, defend and hold Metro harmless from all costs and expenses, including attorneys' fees, in connection with such action. In the event of any breach of this Section 16, the injured Party will be entitled, in addition to any other remedies that it may have at law or in equity, to injunctive relief or an order of specific performance, except that in no event shall Metro be liable for any monetary damages under this Section 16.

17. Compliance with Laws.

During the term of this MOA, ARTT LLC, at its expense, shall comply with all applicable federal, state and local laws, ordinances, regulations, rules and orders with respect to the subject matter of this MOA.

18. Successors and Assigns.

This MOA shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns.

19. Notices.

All notices required or permitted hereunder shall be delivered in person, by courier or overnight delivery service (e.g., USPS Express Mail, FedEx Express, etc.), or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address shown below, with an additional courtesy copy by facsimile transmission or electronic mail, or to any other place designated in writing by such Party.

Metro: Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Mail Stop 22-1  
Los Angeles, CA 90012-2952  
Attention: Holly Rockwell  
Email: rockwellh@metro.net

With a copy to: Office of the County Counsel  
One Gateway Plaza  
Mail Stop 24-2

Los Angeles, CA 90012-2932  
Attention: Teddy Low  
Email: lowt@metro.net

ARTT LLC: Aerial Rapid Transit Technologies LLC  
700 S. Flower Street, Suite 2995  
Los Angeles, CA 90017  
Attention: Martha Welborne  
Email: martha.welborne@aerialrapidtransit.la

With copy to: Cindy Starrett  
Beth Gordie  
Latham & Watkins LLP  
355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071-1560  
Email: cindy.starrett@lw.com; beth.gordie@lw.com

Any such notice shall be deemed received (i) upon delivery, if delivered personally, (ii) the next business day after delivery if delivered by courier or overnight delivery service (e.g., USPS Express Mail, FedEx Express, etc.), or (iii) three (3) days after deposit into the United States Mail in Los Angeles County, California, if delivered by registered or certified mail.

20. Interpretation.

A. Construction. This MOA shall be construed in accordance with its fair meaning, and not strictly for or against either Party.

B. Conflict. In the event of a conflict between this MOA and the exhibits attached hereto, the terms of this MOA shall govern.

C. Gender. When the context of this MOA requires, (i) the neutral gender includes the masculine and feminine and any entity, and (ii) the singular includes the plural.

D. Section Headings. The headings of the Articles and Sections of this MOA are inserted solely for convenience of reference and are not intended to govern, limit or aid in the construction of any term or provision hereof.

E. Interpretation. The word "including" shall be construed as though the words "but not limited to" were, in each case, appended thereafter, and shall not be deemed to create a limitation to the list that follows "including".

F. Incorporation of Recitals. The Recitals of this MOA are incorporated herein by reference.

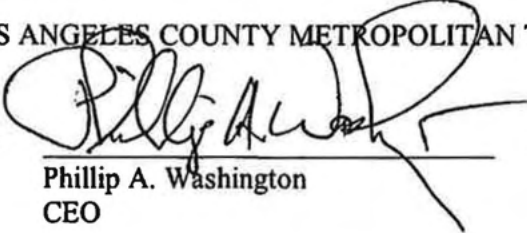
*[Signature page follows]*

IN WITNESS WHEREOF, Metro and ARTT LLC have signed this MOA as of the dates set forth below.

Metro:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By:



Phillip A. Washington  
CEO

Date:

5/2/2019

AERIAL RAPID TRANSIT TECHNOLOGIES LLC

By:



Martha Welborne  
Project Director

Date:

5/20/2019

**Exhibit A**  
**CEQA ROLES AND RESPONSIBILITIES**

**Overview of CEQA Process**

ARTT LLC proposes to collaborate with Metro to prepare, process, and complete environmental clearance pursuant to the California Environmental Quality Act (“CEQA”) for the Aerial Rapid Transit project (“ART” or “Project”). As detailed below, Metro shall act as Lead Agency for the Project’s environmental clearance. As the Lead Agency under CEQA, Metro may incorporate and adopt materials—including those drafted by the applicant or the applicant’s consultants—so long as the lead agency independently reviews, evaluates, and exercises judgment over those materials. ARTT LLC proposes to contract with, manage, and fund preparation of the required CEQA documentation for the Project. To the extent feasible for the ART, ARTT LLC will utilize Metro’s “on call” list of approved consultants for preparation of the technical analysis, public outreach and environmental review. ARTT LLC will initially develop a schedule of deliverables jointly with Metro and ensure that qualified consultants provide all necessary technical analysis and environmental documents to the appointed Metro staff for their review. ARTT LLC shall cover the costs associated with the preparation and certification of any required environmental documents including an EIR under CEQA. ARTT LLC shall arrange and pay for all required CEQA studies and reviews at its sole cost and expense, including but not limited to any associated legal challenge to such CEQA studies and reviews. Metro shall exercise its own independent judgment in the review and certification of any environmental documents prepared in connection with Metro’s consideration of the Project. Additionally, ARTT LLC is fully committed to full and open community engagement and collaboration and will be retaining community outreach experts to work with our team and Metro during the environmental review.

**ARTT LLC’s Roles and Responsibilities**

Selection of and Contracting with the EIR Preparer and Technical Consultants. In consultation with Metro, ARTT LLC will select the EIR preparer and technical consultants for the ART EIR. To the extent both feasible and practical, ARTT LLC will select an EIR preparer and technical consultant from Metro’s approved bench of consultants and/or that Metro deems qualified by Metro to work on the EIR for the Project. ARTT LLC shall contract with and directly pay the EIR preparer and technical consultants for all work on the Project.

Metro CEQA Legal Sufficiency Review. Metro/County Counsel will retain the services of an outside legal firm to review all environmental documents subject to Metro approval and certification. At the time of the preparation of the Draft EIR and Final EIR, Metro will contract for such services as a reimbursable expense under the terms of this MOA.

Preparation of Technical Reports and Draft and Final EIR. The EIR preparer and technical consultants will prepare the technical reports and the Draft and Final EIR for the ART. The Final EIR shall include Findings of Fact and a Mitigation Monitoring & Reporting Plan for use in the certification documentation taken to the Metro Board of Directors.

Process and Timing. ARTT LLC and Metro shall establish the environmental review process and timing. The process will include issuance of the Notice of Preparation and preparation of the Initial

Study, the public Scoping Session, preparation of all technical reports and Draft EIR sections, circulation of the Draft EIR, and responses to comments and the Final EIR. A detailed schedule will be developed for these Project milestones, as well as a micro schedule with targeted time periods for review of the documents by Metro. ARTT LLC's goal is to begin work with Metro immediately to develop a more detailed schedule for the analysis, documentation, and review of the EIR so that Metro staff can anticipate the timing of their involvement.

Community Outreach. The ARTT LLC shall have responsibility for, and bear all the costs associated with community outreach and public coordination. ARTT LLC will prepare a communication plan for review and approval by Metro and will provide Metro with all public communications, statements, press releases, literature, etc. related to the Project.

ARTT LLC Reimbursement of Metro Time. ARTT LLC will reimburse Metro for the fully burdened labor rate of all staff time spent reviewing the environmental documents for ART and, as determined by ARTT LLC and Metro, any community outreach by Metro during the CEQA process.

### **Metro's Roles and Responsibilities**

Lead Agency. Metro shall act as Lead Agency for the Project's environmental clearance. Metro shall exercise its own independent judgment in the review and certification of any environmental documents prepared in connection with Metro's consideration of the Project.

Process and Timing. As noted above, ARTT LLC and Metro shall establish the environmental review process and timing. Metro will review and comment on drafts of all environmental documents in accordance with the schedule. Metro shall process the ART environmental clearance through the Metro approval process, including Committee and Board approval of the final environmental documentation. A high level generalized schedule for the environmental review process is presented in Exhibit B. A more detailed (primavera or similar) schedule shall be prepared by ARTT LLC upon retention of an environmental consultant for review and approval by Metro. Metro shall work in good faith and take best efforts to meet the schedule dates, however, areas of schedule risk should be identified that can often result from public consultation consensus building and necessary consultation and approvals required by local and state offices, agencies and organizations.



**Exhibit B**  
**SCHEDULE FOR THE ENVIRONMENTAL REVIEW PROCESS**

Project Task	Duration	Start Date	End Date
<b>Receipt of Notice to Proceed</b>	1 Day	May 1, 2019	May 1, 2019
<b>Kickoff Meeting</b>	1 Day	May 8, 2019	May 8, 2019
<b>AECOM to Provide NOP/IS Data Needs List</b>	2 Days	May 9, 2019	May 10, 2019
Applicant to provide NOP/IS Data Needs	2 Weeks	May 13, 2019	May 28, 2019 <sup>1</sup>
<b>AECOM to Provide EIR Data Needs List</b>	1 Week	May 29, 2019	June 5, 2019
Applicant to provide EIR Data Needs <sup>2</sup>	8 Weeks	June 6, 2019	August 1, 2019
<b>AECOM to Prepare NOP/IS and Mailing List</b>	12 Weeks	May 29, 2019	August 21, 2019
Metro Review	2 Weeks	August 22, 2019	September 6, 2019 <sup>1</sup>
<b>AECOM to Finalize/Distribute NOP/IS</b>	1 Week	September 9, 2019	September 16, 2019
<b>NOP/IS Public Review Period</b>	30 Days	September 17, 2019	October 16, 2019
<b>Scoping Meetings</b>	TBD	TBD (Sep/Oct 2019)	TBD (Sep/Oct 2019)
<b>AECOM to Prepare EIR Project Description<sup>2</sup></b>	7 Weeks	August 2, 2019	September 20, 2019
Metro Review	2 Weeks	September 23, 2019	October 7, 2019
<b>AECOM to Prepare Tech Studies &amp; DEIR<sup>3</sup></b>	23 Weeks	October 8, 2019	March 17, 2020
Metro Review	2 Weeks	March 18, 2020	April 1, 2020
<b>AECOM to Prepare Print-Ready DEIR<sup>4</sup></b>	3 Weeks	April 2, 2020	April 23, 2020
Metro Review	1 Week	April 24, 2020	May 1, 2020
<b>AECOM to Finalize Draft EIR</b>	1 Week	May 4, 2020	May 11, 2020
<b>CEQA Public Review Period</b>	45 Days	May 12, 2020	June 25, 2020
<b>CEQA Public Meetings</b>	TBD	TBD (May/June 2020)	TBD (May/June 2020)
<b>AECOM to Prepare Draft FEIR/ Responses to Comments</b>	11 Weeks	June 26, 2020	September 11, 2020
Metro Review	2 Weeks	September 14, 2020	September 28, 2020
<b>AECOM to Prepare Print-Ready FEIR</b>	3 Weeks	September 29, 2020	October 20, 2020
Metro Review	2 Weeks	October 21, 2020	November 4, 2020
<b>Prepare to Circulate FEIR to Commenters</b>	3 Days	November 5, 2020	November 9, 2020
<b>10-Day Review Period</b>	10 Days	November 10, 2020	November 20, 2020 <sup>1</sup>
<b>Metro Board Certification</b>	60 Days	Dec 2020/ Jan/Feb 2021	Dec 2020/ Jan/Feb 2021
<b>File NOD</b>	1 Day	Dec 2020/ Jan/Feb 2021	Dec 2020/ Jan/Feb 2021

1-Accounts for holidays

2-Concurrent with other tasks

3-Technical Studies and DEIR will be submitted to Metro on a rolling "waterfall" basis, as they are completed.

4-AECOM will coordinate with Metro on their revisions and incorporation of their edits/comments into the documents.

## **Exhibit C**

### **INSURANCE**

ARTT LLC shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons, or damages in property which may arise from or in connection with the performance of the work hereunder by ARTT LLC, its agents, representatives, employee or subcontractors. As respects Errors and Omissions, coverage must be maintained, and evidence provided, for two years following the expiration of this MOA. Insurance terms related to other future agreements including a ROE may well be different.

#### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG0001)
2. Insurance Services Office form number CA0001 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability Insurance.

#### **MINIMUM LIMITS OF INSURANCE**

ARTT LLC shall maintain limits no less than:

1. General Liability: \$ 1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit or \$2,000,000. Products/Completed Operations aggregate shall apply separately to this contract/agreement or the aggregate limit shall be twice the required per occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability: \$1,000,000 per claim.

#### **OTHER INSURANCE PROVISIONS**

The insurance policies required per the terms of the contract are to contain, or be endorsed to contain, the following provisions:

1. Metro, its subsidiaries, officials and employees are to be covered as additional insureds on the General Liability policy as respects liability arising out of the activities performed by or on behalf of ARTT LLC; products and completed operations of ARTT LLC; premises owned, occupied or used by ARTT LLC. The general liability coverage shall also include contractual, personal injury, independent contractors and broad form property damage liability. The coverage shall contain no special limitations on the scope of protection afforded to Metro, its subsidiaries, officials and employees.
2. For any claims related to this project, ARTT LLC's insurance coverage shall be primary insurance as respects Metro, its subsidiaries, officials and employees. Any insurance or self-

insurance maintained by Metro shall be excess of ARTT LLC's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Metro, its subsidiaries, officials and employees.
4. ARTT LLC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Metro.
6. Workers' Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of Metro.
7. Professional Liability insurance shall be continued, and evidence provided to Metro, for two years following the expiration of the contract or, tail coverage provided for two years in the event of cancellation or non-renewal.

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to, and amounts over \$25,000 approved by Metro.

#### **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with California admitted, or non-admitted carriers approved by the California Department of Insurance. All carriers must have a current A.M. Best's rating of no less than A-VII, unless otherwise approved by Metro.

#### **VERIFICATION OF COVERAGE**

ARTT LLC shall furnish Metro with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by Metro before work commences. If requested by Metro, ARTT LLC shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

#### **SUBCONTRACTORS**

ARTT, LLC shall include all subcontractors as insured under its policies or shall furnish certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. If requested by Metro, ARTT, LLC shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

# **EXHIBIT G**



**Metro**

Los Angeles County  
Metropolitan Transportation Authority

One Gateway Plaza,  
Los Angeles, CA 90012-2952

**Stephanie N. Wiggins**  
*Chief Executive Officer*  
213.922.7599 Tel  
213.922.7447 Fax  
wiggins@metro.net

September 9, 2021

Dr. Robert K. Ross, MD  
Chief Executive Officer  
The California Endowment  
1000 Alameda Street  
Los Angeles, CA 90012

Father Gregory Boyle, S.J.  
Founder  
Homeboy Industries, Inc.  
130 W. Bruno Street  
Los Angeles, CA 90012

**Re: Los Angeles Aerial Rapid Transit (LAART) Project**

Dear Dr. Ross and Father Boyle:

Thank you for continuing an open dialogue and meeting with Metro to discuss the LAART project. I wanted to respond to the questions you raised at the July 19 meeting and your email dated August 2. As CEQA lead agency, Metro is responsible for ensuring that all questions and concerns are heard and thoroughly considered. As a stakeholder along Alameda Street and a key contributor to the community, your thoughts and questions are greatly appreciated.

**Transportation Studies**

Aerial Rapid Transit Technologies, LLC (“ARTT”) anticipates that its gondola project will reduce traffic by up to 3,000 vehicles. This estimate is based on the LAART gondola being able to transport between 5-5,500 people per hour, or approximately 10,000 people two hours before and after Dodger games. Based on average vehicle occupancy, this is equivalent to about 3,000 avoided vehicle trips in the vicinity of Dodger Stadium.

This “back of the envelope” calculation certainly does not take the place of comprehensive transportation studies. ARTT is preparing all transportation studies, including a robust CEQA analysis and non-CEQA transportation analysis. In addition, a parking analysis will be performed within the 1/2-mile walkshed of both Alameda and Chinatown/State Park stations. Traffic and parking are a major concern of all stakeholders in the area. Metro staff will continue to be actively engaged in ensuring the transportation studies are

comprehensive and thorough. When the traffic analysis is complete, Metro staff and LAART will be available to answer any questions you may have.

The EIR will also include a discussion of the “No Project” alternative and its impacts. For LAART, the “No Project” alternative assumes that those attending Dodger games would likely travel in the same ways they currently do, adding to the anticipated growth in traffic that is expected over time. Because Dodger Stadium is a preexisting facility, its capacity is assumed to remain at its existing 56,000 seats in the “No Project” alternative. This approach is conservative and means that LAART will need to show a reduction in vehicle miles travelled, air emissions, and GHG impacts to be a superior environmental alternative as compared to the “No Project” scenario.

#### Design Plans

The design of the LAART project continues to advance. Locations and footprints for the stations and towers were provided at the June 3<sup>rd</sup> and June 5<sup>th</sup> community meetings and attached to my letter dated July 16<sup>th</sup>. That letter also included draft information regarding the dimensions of the station and tower footprints and heights, although they were approximate as their design continues to evolve.

ARTT has been soliciting and has received a significant amount of feedback from stakeholders regarding the locations and footprints of potential towers and stations and has been incorporating that feedback into their design plans. It is my understanding that ARTT has contacted you to meet and review the design plans. I would like to facilitate a meeting between you and LAART so that they may better understand your future plans, incorporate your feedback into their design, and discuss potential community benefits. The Draft EIR is planned to be released in January 2022, and will include the next iteration of design plans, consistent with Metro’s environmental clearance process.

#### ARTT/Metro Memorandum of Agreement (MOA)

Please find attached a copy of the agreement between ARTT and Metro effective April 26, 2019. The MOA outlines the terms under which Metro agreed to be CEQA lead agency, including ARTT bearing sole financial responsibility for the project, reimbursement for Metro staff time, and that no Metro funds will be used for CEQA, design, construction, or operation of the project. Section 16 relates to confidentiality and affirms applicable law regarding public records disclosure.

#### Sufficiency of Notice of Preparation (NOP)

The NOP for the LAART project, released in October 2020, included two alignment alternatives that provided stakeholders an opportunity to identify issues of concern for further analysis in the Draft EIR. CEQA Guidelines define the NOP as “a brief notice sent

by a lead agency to notify . . . [responsible, trustee, and federal] agencies . . . that the lead agency plans to prepare an EIR for the project. The purpose of the NOP is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR." At a minimum, the NOP must include: (A) the description of the project, (B) the location of the project, and (C) probable environmental effects of the project. Additional details are typically unavailable at the early stages of project development before conceptual and preliminary engineering are completed.

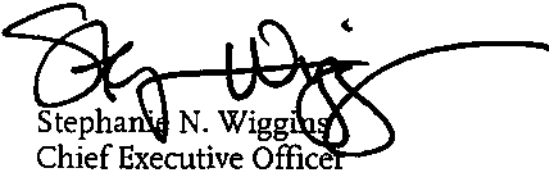
Metro's County Counsel reviewed the NOP at the time it was issued and again recently. They have determined that the NOP was fully compliant with CEQA and therefore does not require recirculation. More detailed information, such as a full project description and analysis of environmental impacts, will be provided in the Draft EIR.

**Land Lease and License Agreements**

Metro's leasing procedures will govern any use of Metro property. Once the design details have been further advanced and the potential use of Metro property is better defined, Metro will appraise the fair market value of its property at Union Station proposed to be utilized by LAART. There will be no discounting from fair market value for the LAART project.

I look forward to meeting with you on September 22, 2022, and continuing this discussion.

Sincerely,

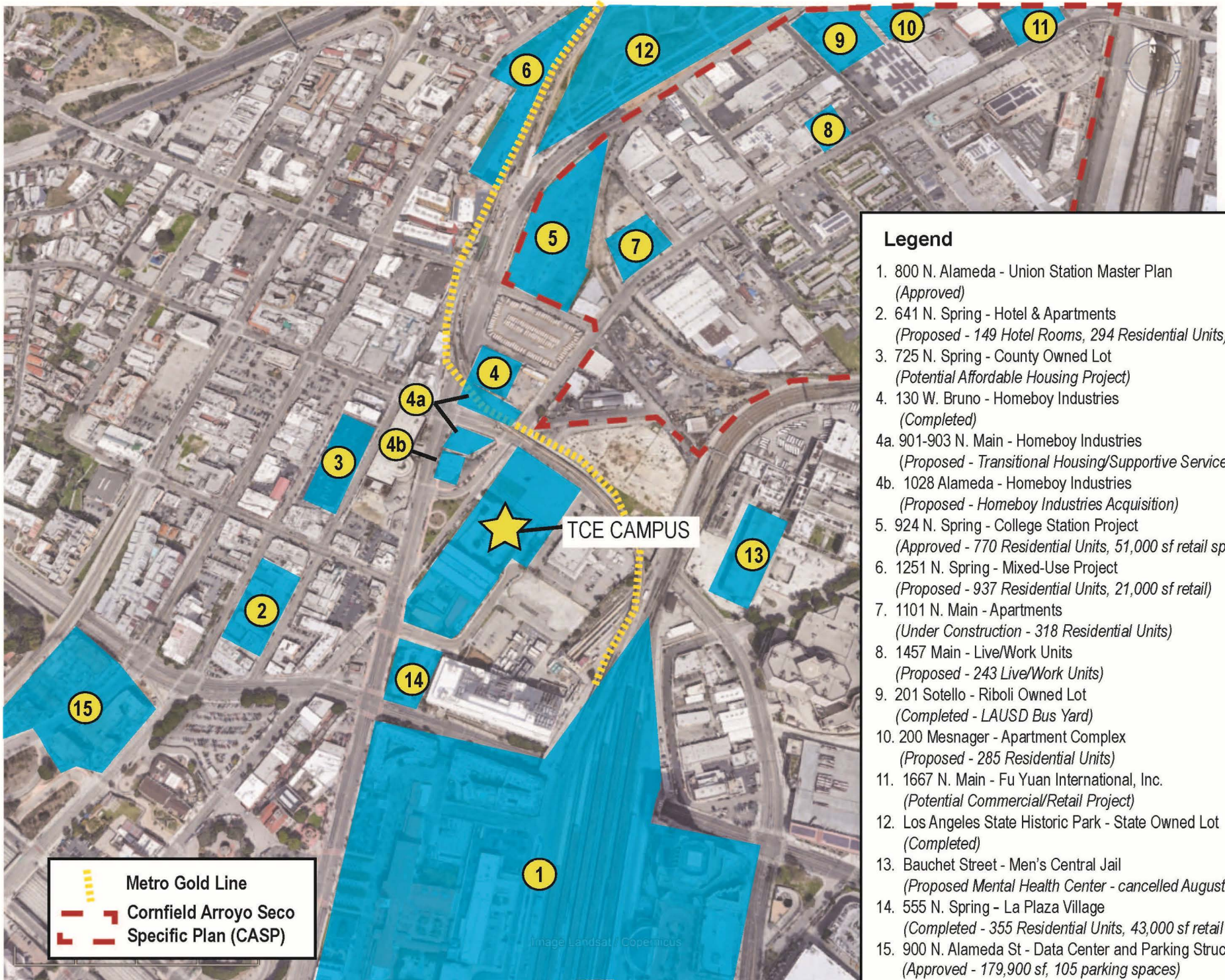


Stephanie N. Wiggins  
Chief Executive Officer

Attachment:  
MOA between Metro and ARTT LLC

# **EXHIBIT H**





### Legend

1. 800 N. Alameda - Union Station Master Plan  
*(Approved)*
2. 641 N. Spring - Hotel & Apartments  
*(Proposed - 149 Hotel Rooms, 294 Residential Units)*
3. 725 N. Spring - County Owned Lot  
*(Potential Affordable Housing Project)*
4. 130 W. Bruno - Homeboy Industries  
*(Completed)*
- 4a. 901-903 N. Main - Homeboy Industries  
*(Proposed - Transitional Housing/Supportive Services)*
- 4b. 1028 Alameda - Homeboy Industries  
*(Proposed - Homeboy Industries Acquisition)*
5. 924 N. Spring - College Station Project  
*(Approved - 770 Residential Units, 51,000 sf retail space)*
6. 1251 N. Spring - Mixed-Use Project  
*(Proposed - 937 Residential Units, 21,000 sf retail)*
7. 1101 N. Main - Apartments  
*(Under Construction - 318 Residential Units)*
8. 1457 Main - Live/Work Units  
*(Proposed - 243 Live/Work Units)*
9. 201 Sotello - Riboli Owned Lot  
*(Completed - LAUSD Bus Yard)*
10. 200 Mesnager - Apartment Complex  
*(Proposed - 285 Residential Units)*
11. 1667 N. Main - Fu Yuan International, Inc.  
*(Potential Commercial/Retail Project)*
12. Los Angeles State Historic Park - State Owned Lot  
*(Completed)*
13. Bauchet Street - Men's Central Jail  
*(Proposed Mental Health Center - cancelled August 2019)*
14. 555 N. Spring - La Plaza Village  
*(Completed - 355 Residential Units, 43,000 sf retail space)*
15. 900 N. Alameda St - Data Center and Parking Structure  
*(Approved - 179,900 sf, 105 parking spaces)*



 Metro Gold Line  
 Cornfield Arroyo Seco Specific Plan (CASP)

Image Landsat/Copernicus